

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1970

No. 123

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INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,  
IRON SHIPBUILDERS, BLACKSMITHS, FORGERS  
AND HELPERS, AFL-CIO, *Petitioner,*

—v.—

GEORGE W. HARDEMAN, *Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

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**CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES**

April 4, 1966	Plaintiff Hardeman's complaint filed in U. S. District Court for Southern District of Alabama, Southern Division.
July 25, 1966	Defendant's motion to dismiss filed.
December 29, 1966	Order entered denying Defendant's motion to dismiss.
January 29, 1968	Defendant's answer filed.
January 16, 1969	Jury trial of action commenced.
January 17, 1969	Plaintiff's amended complaint filed
January 17, 1969	Court's charge to the jury, and verdict of the jury in favor of Plaintiff and against Defendant in sum of \$152,150 and costs. Judgment entered.
January 27, 1969	Defendant's motion to set aside judgment and grant a new trial, or, in the alternative, for judgment notwithstanding verdict filed.
March 10, 1969	Order entered denying Defendant's motion to set aside judgment and grant a new trial.
March 19, 1969	Defendant's notice of appeal filed.
December 11, 1969	Appellant's motion to reinstate appeal to regular docket for full argument or, in the alternative, for leave to file reply brief filed.
December 22, 1969	Opinion and judgment of Court of Appeals.



IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

GEORGE W. HARDEMAN,

*Plaintiff,*

vs.

THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON  
SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,  
an unincorporated association.

*Defendant.*

Civil Action No. 4038-66

Statement of Claim

(Filed April 4, 1966)

Count One

Plaintiff claims of Defendant, Three Hundred Thousand and No/100 (\$300,000.00) Dollars, as damages for that:

1. Defendant is an unincorporated association composed of boilermakers.

2. Plaintiff avers that he has exhausted all reasonable Internal Remedies offered by the Defendant as required by statute.

3. Prior to October 29, 1960, plaintiff was a boilermaker and was a member of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, heretofore referred to as the defendant.

4. On or about, to-wit, October 29, 1960, plaintiff was tried before a board selected by the defendant on charges of violating Article XIII, Section I, Subordinate Lodge Constitution of the Defendant and Article XII, Section I, of the Subordinate Lodge By-Laws of the Defendant. As a result of this hearing, plaintiff alleges that his membership in the defendant was revoked.

5. Plaintiff brings this suit under Title 29, U. S. C. A. Section 401 et seq, also known as the Labor Management Reporting and Disclosure Act (1959) and alleges that he did not receive a full and fair hearing by the aforementioned board for the following reasons:

6. The Findings of said board did not conform to the evidence considered by said board at said hearing.

7. The aforementioned board wrongfully found plaintiff guilty and did wrongfully revoke plaintiff's membership in the defendant, contrary to the provisions of Title 29, Section 401 et seq.

8. Wherefore: As a proximate result of the aforementioned wrongful action of defendant, plaintiff was damaged in the following: He has suffered loss of wages and income since he is unable to work now that he has lost his Union Card and membership in the Union. He has also suffered the loss of his person and retirement which was provided as an incident of Union Membership, he has also suffered the loss of insurance benefits which were his as a member of the aforementioned Union, and plaintiff has suffered embarrassment and injury to his reputation and plaintiff has suffered mental anguish all as a direct and proximate result of the aforementioned wrongful act of defendant.

9. Plaintiff also claims punitive damages for the aforementioned wrongful act of defendant.

Wherefore: Plaintiff brings this suit and asks judgment in the above amount.

### Count Two

Plaintiff claims of defendant Three Hundred Thousand and No/100 (\$300,000.00) Dollars, as damages for that:

1. Defendant is an unincorporated association composed of boilermakers.

2. Plaintiff avers that he has exhausted all reasonable Internal Remedies offered by the defendant as required by statute.

3. Prior to October 29, 1960, plaintiff was a boilermaker and was a member of the International Brotherhood of

Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, heretofore referred to as the defendant.

4. On or about, to-wit, Octobr 29, 1960, plaintiff was tried before a board selected by the defendant on charges of violating Article XIII, Section I, of the Subordinate Lodge Constitution of the defendant, and Article XII, Section I, of the Subordinate Lodge By-Laws of the defendant. As a result of this hearing, plaintiff alleges that his membership in the defendant was revoked.

5. Plaintiff brings this suit under Title 29 U.S. C.A. Section 401 et seq, also known as the Labor Management Reporting and Disclosure Act (1959) and alleges that he did not receive a full and fair hearing by the aforementioned board for the following reasons:

6. The board was biased and improperly selected and the members of said board were then indebted and would continue to be indebted to the person who brought the charges before the board against your plaintiff.

7. The aforementioned board wrongfully found plaintiff guilty and did wrongfully revoke plaintiff's membership in the defendant, contrary to the provisions of Title 29, Sections 401 et seq.

8. Wherefore: As a proximate result of the aforementioned wrongful action of defendant, plaintiff was damaged in the following: He has suffered loss of wages and income since he is unable to work now that he has lost his Union Card and membership in the Union. He has also suffered the loss of his pension and retirement which was provided as an incident of Union Membership, he has also suffered the loss of insurance benefits which were his as a member of the aforementioned Union, and plaintiff has suffered embarrassment and injury to his reputation and plaintiff has suffered mental anguish all as a direct and proximate result of the aforementioned wrongful act of defendant.

9. Plaintiff also claims punitive damages for the aforementioned wrongful act of defendant.

Wherefore: Plaintiff brings this suit and asks judgment in the above amount.

### Count Three

Plaintiff claims of defendant Three Hundred Thousand And No/100 (\$300,000.00) Dollars, as damages for that:

1. Defendant is an unincorporated association composed of boilermakers.

2. Plaintiff avers that he has exhausted all reasonable Internal Remedies offered by the defendant as required by statute.

3. Prior to October 29, 1960, plaintiff was a boilermaker and was a member of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, heretofore referred to as the defendant.

4. On or about, to-wit, October 29, 1960, plaintiff was tried before a board selected by the defendant on charges of violating Article XIII, Section I, Subordinate Lodge Constitution of the defendant and Article XII, Section I, of the Subordinate Lodge By-Laws of the defendant. As a result of this hearing, plaintiff alleges that his membership in the defendant was revoked.

5. Plaintiff brings this suit under Title 29, U.S. C.A. Section 401 et seq, also known as the Labor Management Reporting and Disclosure Act (1959) and alleges that he did not receive a full and fair hearing by the aforementioned board for the following reasons:

6. The evidence considered by said board did not conform to the charges presented.

7. The aforementioned board wrongfully found plaintiff guilty and did wrongfully revoke plaintiff's membership in the defendant, contrary to the provisions of Title 29, Sections 401 et seq.

8. Wherefore: As a proximate result of the aforementioned wrongful action of defendant, plaintiff was damaged in the following: He has suffered loss of wages and income since he is unable to work now that he has lost his Union Card and membership in the Union. He has also suffered the loss of his pension and retirement which was provided as an incident of Union Membership, he has also suffered the loss of insurance benefits which were his as a member of the aforementioned Union, and plaintiff has suffered embarrassment and injury to his reputation and

plaintiff has suffered mental anguish all as a direct and proximate result of the aforementioned wrongful act of defendant.

9. Plaintiff also claims punitive damages for the aforementioned wrongful act of defendant:

Wherefore: Plaintiff brings this suit and asks judgment in the above amount.

#### Count Four

Plaintiff claims of Defendant Three Hundred Thousand And No/100 (\$300,000.00) Dollars, as damages for that:

1. Defendant is an unincorporated association composed of boilermakers.

2. Plaintiff avers that he has exhausted all reasonable Internal Remedies offered by the defendant as required by statute.

3. Prior to October 29, 1960, plaintiff was a boilermaker and was a member of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, heretofore referred to as the defendant.

4. On or about, to-wit, October 29, 1960, plaintiff was tried before a board selected by the defendant on charges of violating Article XIII, Section I, Subordinate Lodge Constitution of the Defendant and Article XII, Section I, of the Subordinate Lodge By-Laws of the defendant. As a result of this hearing, plaintiff alleges that his membership in the defendant was revoked.

5. Plaintiff brings this suit under Title 29, U.S. C.A. Sections 401 et seq, also known as the Labor Management Reporting and Disclosure Act (1959) and alleges that he did not receive a full and fair hearing by the aforementioned board for the following reasons:

6. For that the sentence and punishment by said board was cruel and unusual punishment for the offense which your plaintiff was found guilty of.

7. The aforementioned board wrongfully found plaintiff guilty and did wrongfully revoke plaintiff's membership in the defendant, contrary to the provisions of Title 29, Sections 401 et seq.

8. Wherefore: As a proximate result of the aforementioned wrongful action of defendant, plaintiff was damaged in the following: He has suffered loss of wages and income since he is unable to work now that he has lost his Union Card and membership in the Union. He has also suffered the loss of pension and retirement which was provided as an incident of Union Membership, he has also suffered the loss of insurance benefits which were his as a member of the aforementioned Union, and plaintiff has suffered embarrassment and injury to his reputation and plaintiff has suffered mental anguish all as a direct and proximate result of the aforementioned wrongful act of defendant.

9. Plaintiff also claims punitive damages for the aforementioned wrongful act of defendant.

Wherefore, Plaintiff brings this suit and asks judgment in the above amount.

/s/ ROBERT E. McDONALD, JR.,  
ROBERT E. McDONALD, JR.,

Attorney for Plaintiff

Plaintiff respectfully demands a trial by jury.

/s/ ROBERT E. McDONALD, JR.,  
ROBERT E. McDONALD, JR.,

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

[Caption Omitted]

ANSWER

(Filed January 29, 1968)

Comes now the defendant in the above styled cause and for answer to the Statement of Claim, count by count, paragraph by paragraph, says as follows:

Count One

1. Defendant admits the allegations in paragraph one of count one.
2. Defendant denies the allegations in paragraph two of count one and demands strict proof.
3. Defendant admits the allegations in paragraph three of count one.
4. Defendant denies the allegations in paragraph four, five, six, seven, eight and nine of count one and joins issue with the Plaintiff on these said paragraphs.

Count Two

1. Defendant admits the allegations in paragraph one of count two.
2. Defendant denies the allegations in paragraph two of count two.
3. Defendant admits the allegations in paragraph three of count two.
4. Defendant denies the allegations in paragraph four, five, six, seven, eight and nine of count two and joins issue with the Plaintiff on these said paragraphs.

Count Three

1. Defendant admits the allegations of paragraph one of count three.
2. Defendant denies the allegations of paragraph two of count three.

3. Defendant admits the allegations of paragraph three of count three.

4. Defendant denies the allegations of paragraph four, five, six, seven, eight and nine of count three and joins issue with the Plaintiff on these said paragraphs.

#### Count Four

1. Defendant admits the allegations of paragraph one of count four.

2. Defendant denies the allegations of paragraph two of count four.

3. Defendant admits the allegations of paragraph three of count four.

4. Defendant denies the allegations of paragraph four, five, six, seven, eight and nine of count four and joins issue with the Plaintiff on these said paragraphs.

BRUTKIEWICZ & CRAIN

By /s/ DONALD E. BRUTKIEWICZ

DONALD E. BRUTKIEWICZ

Attorney for Defendant



IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

[Caption Omitted]

Amended Statement of Claim

(Filed January 17, 1969)

Plaintiff with leave of Court had and obtained amends his bill of complaint and each count thereof by striking from paragraph four in each count the words "selected by the defendant" and adding to the said paragraph four in each count of the bill of complaint the averment that defendant finally refused plaintiffs appeal on to-wit April 19, 1961.

/s/ ROBERT E. McDONALD, JR.,  
ROBERT E. McDONALD, JR.,  
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

[Caption Omitted]

Transcript of Proceedings of Jury Trial

(Held January 16, 17, 1969)

\* \* \*

[1] This cause coming on to be heard before the HONORABLE DANIEL H. THOMAS, United States District Judge, on the 16th and 17th days of January, 1969, the same being two of the trial days of the said Court, beginning at approximately 9:30 o'clock, a.m. each day, with a Jury, the following testimony was offered and proceedings had:

[2] APPEARANCES:

For the Plaintiff:

ROBERT E. McDONALD, JR., Esq.  
Attorney-At-Law  
First National Bank Building  
Mobile, Alabama

For the Defendant:

MESSES. BRUTKIEWICZ & CRANE  
Attorneys-At-Law  
Van Antwerp Building  
Mobile, Alabama

By: DONALD E. BRUTKIEWICZ, Esq.

JOHN J. BLAKE, Esq.  
Attorney-At-Law  
570 New Brotherhood Building  
Kansas City, Kansas

CHARLES A. HOWARD,  
Reporter.

\* \* \*

## OPENING STATEMENT

By Counsel for Plaintiff

\* \* \*

[7] This case is a damage-type suit. It is a suit for money damages and it is occasioned by what we expect to prove was the wrongful expulsion of George Hardeman from the Defendant Union back in 1960.

\* \* \*

## OPENING STATEMENT

By Counsel for Defendant

\* \* \*

[13] After this duly elected trial body met, they returned this finding according to the rules [14] and regulations set out in the constitution and they had to turn around and submit their findings of the trial body to the entire membership of the Local and the entire membership of the Local voted to have him expelled indefinitely from the Union. Now, what did that mean? That meant he was expelled from the Union for an indefinite period of time. It was not forever. He went out of the Union.

Mr. Bullock, who had been similarly situated and also engaged in the fistieuffs at the Union Hall, he waited around and came back and filed his petition for reinstatement and was duly reinstated.

MR. McDONALD:

I object to that. What Mr. Bullock did in this case is irrelevant to this case and is prejudicial remarks.

THE COURT:

Let me see you all in my office.

(Whereupon, the following occurred in Chambers:)

THE COURT:

[15] I don't remember this phase of it and I don't know whether it is admissible or not. What is it?

**MR. BRUTKIEWICZ:**

Bullock was the third person involved, Judge, and I intended to show that he could have minimized his damages, if he actually were damaged, and that he could have applied for reinstatement as Bullock did. He was reinstated back in the Union, a card-carrying member, and has worked as a foreman on several jobs since.

**MR. McDONALD:**

Judge, that would be purely speculative as to whether or not Mr. Hardeman would be reinstated.

**MR. BLAKE:**

Mr. Hardeman made no effort to be reinstated.

**MR. McDONALD:**

I would like to point out to the Court that the Braswell case was on file at the time they took Mr. Bullock back in.

**THE COURT:**

I think the fact that he did not apply for reinstatement is admissible. I think the fact that Bullock did apply and was reinstated is [16] inadmissible. I think it is speculative as to whether Hardeman would have been reinstated or not. Whether Bullock was or was not, I don't think it is material. I am going to sustain the objection to that, but I think the fact that Hardeman could have applied and didn't is admissible.

**MR. BLAKE:**

We will take exception to that, Your Honor.

**MR. BRUTKIEWICZ:**

I would like to point out, Judge, that there are a whole line of decisions, not particularly on this point, but the other way, if two or three people are disciplined by the Union and one of the two takes an appellate relief and is denied, then it is naturally assumed that those three that didn't even apply would have been turned down the same as the person who did apply.

MR. McDONALD:

What has that got to do with the application for reinstatement?

THE COURT:

[17] Well, I may be right or I may be wrong, but that is the way I am going to rule on it. The fact that one man was reinstated, I don't think is admissible. I think the fact that he did not apply for reinstatement is admissible and I hope I am right.

Let's go back to the Courtroom.

(Back in open Court.)

THE COURT:

Proceed, Mr. Brutkiewicz.

MR. BRUTKIEWICZ:

If it please the Court, if I recollect, I was talking about Mr. Hardeman not making any effort to minimize his damages and not making any effort to reinstate himself in this local. He could have made the application and the probabilities are good that he would have been reinstated.

MR. McDONALD:

Judge, I am going to object to his arguments on probability.

THE COURT:

Sustained.

\* \* \*

# TESTIMONY OF HERMAN H. WISE, WITNESS ON BEHALF OF PLAINTIFF

Direct Examination

\* \* \*

[26] MR. McDONALD:

All right, sir. Now, on the basis of this, a vote was taken in the local lodge after this as to whether or not to affirm this. Do you have the minutes of that meeting?

A I do, sir.

Q All right. I notice they are in the minute book.

A Here it is.

MR. McDONALD:

Your Honor, I am going to offer these. These are the minutes of that particular meeting.

A That is correct.

Q Which voted on the expulsion?

A That is correct.

\* \* \*

[27] Judge, we particularly are interested only in the minutes which pertain to the expulsion vote. The rest of the minutes we are not interested in. We could limit our introduction as to that portion only, that page only.

THE COURT:

All right. Mr. Wise, point out the page which has only to do with the expulsion.

THE WITNESS:

Yes, sir.

THE COURT:

All right. Mr. O'Connor, have someone to get a [28] photostat of that and then return the minute book.

(Whereupon, said minute entry with regard to the expulsion of Mr. Hardeman was received and marked in evidence, Plaintiff's Exhibit No. 2.)

\* \* \*

[30] Q Now, subsequent to this, the Executive Council did try the appeal, didn't it?

A They heard the appeal.

Q This was the Executive Council of the International Brotherhood, the parent organization, the Defendant, and not the local lodge, is that correct?

A It was a panel of the Executive Council that heard the appeal, correct.

Q And it was a part of the Defendant, the International body?

A It was the panel from the Executive Council of the International.

Q Of the International and not Lodge 112?

A That is correct.

\* \* \*

TESTIMONY OF GEORGE W. HARDEMAN,  
WITNESS ON BEHALF OF PLAINTIFF

Direct Examination

\* \* \*

[75] Q All right, sir. Tell this Jury exactly what a business agent does in a union.

\* \* \*

[75] A He sends the men out on jobs, gives you a referral card to go to work.

\* \* \*

[77] Q All right. Now, you have told us the business agent is the man who refers people out to work from the hall?

A Yes.

Q Is he an elected official?

A Yes, sir.

Q And he serves in each local, is that correct?

A Yes.

Q Now, who does he select—which man will go out to work?

A Well, when I was in the local—I don't know how it is run now. We had an out-of-work book. When we come in off of a job, we put our name down, each man. You come down the list, you take the men as they come and go down the list.

Q In other words, in the order they are on the list?

A Yes, sir.

[78] Q And that is provided for by law, isn't it?

A Yes, sir.

Q And those are the ways he selects the men to go out on a job?

A Yes, sir.

Q Isn't it also a fact when a local contractor needs boilermakers, does he call the business agent to send them to him or does he go out and hire them?

A Well, he is not supposed to do it. He is not supposed to go out and hire them. He is supposed to call the business agent and the business agent is supposed to give him a referral and they take the referral on the job.

\* \* \*

[80] Q How does a contractor hire the boilermakers?

A Well, the way it is supposed to be did, he will call the business agent and he will tell him how many men he wants and what he wants, whether he wants welders, riggers, tube rollers, whatever he wants. Well, the men go down this list, this book, from the top. He starts at the top and comes down.

Q At the top of what?

A The list.

Q Which list?

A The out-of-work book.

Q The out-of-work list?

[81] A Yes, sir. He sends these men out there.

Q That is the business agent?

A Yes, sir.

Q Now, is this according to the agreement between the Union and the contractors that they will hire men in this manner?

A Yes, sir, or by letter or by telegram.

Q A letter or telegram to who?

A From the contractor requesting such and such a man.

Q Okay. From the contractor to whom?

A Business agent.

Q The business agent?

A That's right.

\* \* \*

[115] Q Did you, at any time, attempt to go on the out-of-work list in the Lodge under the right-to-work law in Alabama?

A Yes, sir.



Q This was after your expulsion from the Union?

A Yes, sir.

Q Did the business agent send you out on any jobs?

A Sent me out on one.

Q Where was that job?

A Pensacola.

Q How long did it last?

A I don't know how long the job last, but I couldn't stay [116] but five days.

. . .

[116] Q Why did you leave?

A They run me off; work dissatisfactory.

Q Were you doing satisfactory work, at that time?

A I think I was.

MR. BLAKE:

I object to that.

THE COURT:

Sustain the objection.

BY MR. McDONALD:

Q All right. Who run you off, the boss or one of the boilermakers?

MR. BLAKE:

I will object to Counsel's colloquialism, "Running off".

THE COURT:

[117] Overruled.

THE WITNESS:

The foreman.

BY MR. McDONALD:

Q Was he a boilermaker?

A Yes, sir.

Q Who gave him his job?

A Mr. Wise.

MR. BLAKE:

Your Honor, I move . . .

THE COURT:

Sustain the objection and exclude the answer.

MR. McDONALD:

Q Well, who decided he would be foreman of the group that went out to work?

MR. BLAKE:

I will object again.

THE COURT:

Sustain the objection.

BY MR. McDONALD:

Q After that, did your name continue on the out-of-work list in the Local Lodge?

A Yes, sir.

[118] Q Were you ever called for any more work, since that time?

A No, sir.

Q So, even though you were registered on the out-of-work list since 1960, you were only called for one job and that was for five days?

A Yes, sir.

Q All right, sir. Could you go on the out-of-work list without a card in lodges that are outside of the State of Alabama that don't have the right-to-work law?

A No, sir.

MR. BLAKE:

Your Honor, I object to that.

THE COURT:

Sustain the objection.

MR. BLAKE:

He has not laid any foundation that this witness could answer any such questions.

**THE COURT:**

Sustain the objection.

**BY MR. McDONALD:**

Q Well, you went on the out-of-work list and tried to get work as a boilermaker, you told us, and you [119] also told us you had been to some shops.

What other efforts did you make to get work as a boilermaker?

A Went to the Alabama Shipyard.

Q Did you get a job over there as a boilermaker?

A No, sir.

Q Anything else?

A I don't know of anything else that the boilermaker covers.

. . .

**Cross Examination**

. . .

[149] Q All right. You understand that you do not have to be a member of any union in order to be put on the list, have your name on this in and out list?

A My name has been on that out-of-work list ever since the day they run me off in Pensacola.

Q Well, did you go by the Union Hall to see if they had any work for you?

A Yes, sir. I made several trips by there.

Q You went out on one job, didn't you?

A That is the one they run me off of....

. . .

[152] Q You know, as a matter of fact, the law is such and you know from being around the Union Hall that if you have your name on that list, whether you are a member or non-member, you are to be sent out?

A Yes, sir. If they had sent you out, they send out who they want to send out. That is what the fight started about, because I didn't get no work. Mr. Wise didn't like me. If I am not his friend, I don't get no work.

Q You had the same trouble with Mr. Otto Davis, didn't you?

A I turned the Labor Relations Board loose on him; yes, sir, for skipping everybody on the work list. That is the reason I didn't get no more work.

. . .

TESTIMONY OF HERMAN H. WISE, WITNESS  
ON BEHALF OF DEFENDANT

[291] Direct Examination

BY MR. BLAKE:

Q Mr. Wise, would you state your name and address, please?

A My name is Herman H. Wise. I live at 3827 Waco Street in Whistler, in the Whistler community, Eight Mile area.

Q Mr. Wise, are you a member of the Boilermakers Union?

A Yes, I am.

Q And to what Local do you belong?

A I belong to Local 112.

[292] Q Is that here in Mobile?

A Right.

Q How long have you been a member of this Union?

A I have been a member since 1942, February, and continuously a member since September of 1946.

Q Do you hold an elected office in that Local Union?

A Yes, I do.

Q What is that elected office?

A Business Manager, Secretary and Treasurer.

Q When were you last elected to that office?

A I was elected in June of 1966 to my last term.

Q Did you hold the office prior to that time?

A I did.

Q Were you elected on other occasions?

A I was elected in 1963, in June, and in 1960 in June.

Q So, then, you have been Business Manager of the Local continuously since 1960?

A Correct.

Q Now, I want to call your attention back to the year

of 1960 and the two or three years preceding that.

Were you working at the trade during those years?

A I was working at the trade, seeking and working at the [293] trade prior to being elected to office.

Q Let's go back to the year 1959. What was the condition of available work, at that time, Mr. Wise?

MR. McDONALD:

Your Honor, I am going to object—Never mind, I withdraw the objection.

THE COURT:

All right.

BY MR. BLAKE:

Q Go ahead.

A The year of 1959 was the last year that I was seeking work in the field. The construction work was low that year.

Q How much did you work yourself that year?

A I worked very little that year.

Q How about 1958, how much did you work that year?

A I worked very little in 1958. There wasn't too much or the work was low also. It was tapering off in 1958.

Q How about the early part of 1960 until you were elected business agent?

A The early part of 1960, I did not work any.

Q All right. Were you a fully qualified mechanic, at [294] that time?

A I was. I had most all of the qualifications that were registered for boilermakers.

Q Were many other mechanics working, at this time?

A No, sir. At this particular time, as I stated, the work was low, slow, and there was a very few men working, at this time.

Q Now, you took office in what month of 1960?

A I was elected in June of 1960 and I was seated into office the first Saturday in July of 1960.

Q How many men were working out of the Local, at that time?

A When I taken office in 1960, to the best of my recollection, there was seventeen men out of the Local employed on construction.

Q How many men in the Local?

A The total membership was around 483 and 200 and approximately 60 were construction members.

Q Of those 260, seventeen were working?

A That's right, when I took office.

Q Did things improve in 1960?

A They improved very slowly, hardly any in 1960.

Q How about 1961?

[295] A They did not improve very much in 1961.

Q Do you recall approximately how many men were working in 1961?

A I had one job—we had one job that was in progress in 1961. It was at Scott Paper Company and about thirty-five to forty men or approximately that was what was employed, at that time.

Q So, in other words, there were a lot of boilermakers out of work, at this time, is that right?

A Correct.

Q A lot of them seeking work, is that correct?

A Correct.

Q. Now, at the time you became business agent, how many jobs did you actually have going?

MR. McDONALD:

I object, repetition. He stated seventeen.

THE COURT:

Overruled.

BY MR. BLAKE:

Q Go ahead.

A There was only one job going and one short job in the making shortly after I was seated into office.

Q All right. Now, again, at the time that you took office [296] in 1960, what type of referral procedure was in existence, at that time? Would you explain that in detail?

A At this time, there was what was known as the non-

exclusive referral system. This was whereby that—not members, but anybody that was qualified as a boilermaker could come by and register with my office for work.

However, you did not have to come by and register. He could pursue his job at the plants themselves. This was under the non-exclusive. This is whereby he came to the office and as he registered, his name was put on a sheet and it was from the top to the bottom. He was registered one under the other one as he came into the office and applied for a job and put his name on the list.

Q Did he have to come through the Union Hall in order to obtain work?

A No, sir. He did not have to come through the Union Hall to obtain work.

Q What other method could he have used?

A He could have went to the job. He could have secured his employment in any other method he so seeks [297] besides coming to the office.

Q There was nothing you could do about this?

A Not a thing in the world that the Local, myself or anybody could do about the situation.

Q So, any man that was qualified could go right to the job, obtain employment and go to work?

A Correct, he could have.

Q Now, was that changed?

A Yes, sir.

Q Was that system changed?

A Yes sir. It was changed.

Q When was it changed?

A This was changed in February of 1961.

Q All right. At that point what type of referral system did you put in or was put in?

A I did not. . . .

Q Strike that and let me go back.

How did the change come about, Mr. Wise?

A Let me state first the type that was put into effect.

Q All right.

A There was a non-exclusive. There was an exclusive put into effect later.

Q Would you explain that to us?

[298] A This exclusive type of referral system was put into effect by a committee under instructions from the national contractors, the International, with equal number of committeemen. In this case, there was two committeemen from the contractors and two from the Union.

Taking this agreement, which was negotiated into the national agreement, the Southeastern states agreement, which we operate under both. Taken that from this and this was the only way under the law we could operate a hiring hall and this was to be under a non-discriminatory basis.

Q This was according to the law?

A It was according to the law.

Q Would you explain to the Court and the Jury what you mean by a non-discriminatory basis?

A A non-discriminatory basis means that any applicant, regardless of his status in the Union and regardless of his status with regard to religion, race, creed, color or nationality or national origin, whereby he could come and establish his qualifications and could enter upon this non-discriminatory referral system and would be sent out according [299] to his qualifications and registration.

Q So, in other words, you couldn't deny a non-Union man the right to sign his name on that list?

A I could not and cannot now.

MR. McDONALD:

I object. He is leading the witness.

THE COURT:

Don't lead the witness.

BY MR. BLAKE:

Q All right. Let me ask you this, could you deny a qualified mechanic, who was not a member of the Union, the right to sign that list?

A I could not deny anybody the right to sign this list who has the qualifications.

Q All right. Now, let me ask you, your local union also represents or has the bargaining rights in some shops in this area, isn't that correct?



A Correct.

Q Are you familiar with these shops also?

A I am.

Q Now, are you also familiar with the Alabama Right-to-Work law?

A I am.

[300] Q Would you explain that please?

A The Alabama Right-To-Work law states that no man will be deprived the privilege of making a living in the State of Alabama whereby if he be a Union member or non-Union member he can go to this place of employment and seek his own employment.

Q Does he have to belong to the Union?

A He does not.

Q All right.

Q In fact, I have three—four shops in the Mobile area and shipyards that has equal number, if not more non-Union members working there today than have for years, and I have Union members working there and these members do not come to my Hall to be referred to these shops. They go to the shop themselves and secure their employment.

Q Can you affect their right to work in any way because they are not a member of the Union?

A I cannot . . . [301] I believe you said could I affect it. I could not affect this man's employment legally or illegally in any way. This is strictly the contractor's business and he operates it.

The Union contractors, the collective bargaining agreement whereby it is recognized and has been established by the Labor Relations Board—these people have the right to join a union or to not join a union. Therefore, we have some of them that are non-union members and some that are. They are mixed.

\* \* \*

[317] Q Now, did Mr. Hardeman, after his indefinite expulsion, did he come back and sign the out-of-work list?

A He came back twice, to my knowledge, after the expulsion.

Q What happened on the first occasion?

A On the first occasion . . .

MR. McDONALD:

Excuse me just a minute.

THE COURT:

Did he get on the books?

THE WITNESS:

Yes, sir.

THE COURT:

All right. I think the question is too general.

BY MR. BLAKE:

Q Well, you have answered now that he did get on the books?

A You asked me . . .

[318] Q We are talking about the first time.

A The first time, right.

Q All right. Was he sent to a job as a result of that?

A Yes, sir. He was.

Q To what job was he sent?

A He was sent to the next job that was available, according to his name on the work list, and that was at St. Regis Paper Company, better known as Cantonement.

\* \* \*

[318] Q Let me ask you this, Mr. Wise, do you know what happened to him on that job?

A Yes, sir. He was discharged for unsatisfactory work.

\* \* \*

[325] Thank you. Now, you stated, I think, that—getting back to the case here, that Mr. Hardeman then signed the out-of-work list a second time, is that correct?

A Correct.

Q That was after he was indefinitely expelled?

A Correct.

Q Now, I hand you what has been marked as Defend-

ant's Exhibit No. 3, and I would like to have you identify this exhibit?

A This is an availability card, which, at that time, they were the same type of card, a duplicate issued to the member or person whose name was on the work list, and one kept in the office. This shows the date. . . .

MR. McDONALD:

Your Honor, I want to interrupt here. I think he has identified it and going further to [326] testify about it—if the document is in evidence, the document would speak for itself.

THE COURT:

Do you intend to offer it?

MR. BLAKE:

Yes, sir.

THE COURT:

All right.

MR. McDONALD:

May I take the witness on Voir Dire, Your Honor?

THE COURT:

Surely.

#### VOIR DIRE EXAMINATION

BY MR. McDONALD:

Q Mr. Hardeman. . . .

A I beg your pardon.

Q Mr. Wise, who makes up this document?

A You mean who presents them?

Q No sir. Who fills it in?

A The secretary in the office fills in those documents.

Q The individual himself that this document is about doesn't fill them in?

A He is standing there or mails them in. There is a [327] duplicate just alike signed, with a date, with a

little punch card there signifying the date that card is received and brought up to date and returned back to him.

**MR. McDONALD:**

I am going to withdraw any objection to this, Your Honor.

**THE COURT:**

All right.

**BY MR. BLAKE:**

Q Let me ask you one more question. Are these cards kept in your office, Mr. Wise?

A One kept in the office and one issued to the person on the work list.

Q Did you take this from your files in the office?

A Correct.

**MR. BLAKE:**

I offer Defendant's Exhibit No. 3.

**THE COURT:**

Mark it in.

(Whereupon, said file card was received and marked in evidence, Defendant's Exhibit No. 3.)

**BY MR. BLAKE:**

[328] Q Now, after the Plaintiff, Mr. Hardeman, signed the out-of-work list for the second time, was he sent out to work after that?

A No, sir.

**THE COURT:**

Let me interrupt just a minute. What do you call this?

**THE WITNESS:**

We call it an availability card. That is what is in the contract.

**THE COURT:**

All right. Go ahead.

BY MR. BLAKE:

Q Now, in order to keep on the out-of-work list, were there any requirements that an applicant had to meet?

A That is correct.

\* \* \*

[329] THE WITNESS:

That is correct. Those requirements were that he was to be available for call at all times, and this referral standard, it was so stated that each applicant . . .

MR. McDONALD:

[330] Judge, I am going to object.

THE COURT:

Mr. Wise, are these qualifications in the by-laws?

THE WITNESS:

Not in the by-laws, but in the referral standards.

THE COURT:

Do you have those here?

THE WITNESS:

I don't know if I have the referral standards or not. I can get them pretty quick. This is a different thing from the by-laws.

BY MR. BLAKE:

Q Let me ask you this, Mr. Wise, and maybe this will clear it up. Are these referral standards outlined in brief form on Defendant's Exhibit No. 3?

\* \* \*

[331] THE COURT:

Let me see it, please.

MR. BLAKE:

The rules for keeping your name on the list are on the back of that Defendant's Exhibit No. 3, is that correct?

A Well, Mr. Blake, until I read that over, I wouldn't know. There is some rules, but it may not cover all the rules of his availability.

THE COURT:

This says or is entitled, "Rules Regarding Job Referrals For Employment On A Non-discriminatory Basis," and I do think the document speaks for itself.

THE WITNESS:

Well, I will have to read it before I can say.

THE COURT:

Mr. Blake, I think he would be limited to what is on there.

MR. BLAKE:

All right.

THE WITNESS:

They are on there.

[332] BY MR. BLAKE:

Q They are on there?

A Yes.

Q Now, did, as a matter of fact, Mr. Hardeman come in and sign the out-of-work list at any time after these two you have already indicated?

A No, sir.

Q All right. Now, as a matter of fact, Mr. Wise, has Mr. Hardeman ever attempted to reinstate at the Union?

A No, sir.

MR. McDONALD:

Judge, I object to that as to whether he attempted to reinstate himself. It is completely irrelevant.

THE COURT:

Overruled.

BY MR. BLAKE:

Q You can answer the question.

A He has not ever attempted to reinstate.

MR. McDONALD:

I want to further object and move to exclude. The witness can only testify to whether he [333] has attempted through himself. He doesn't know what he might have attempted at any other lodge or International level and cannot testify to that.

THE COURT:

Mr. Wise, as business agent of Local 112, has he attempted to reinstate through Local Lodge 112?

THE WITNESS:

No sir.

\* \* \*

### CROSS EXAMINATION

\* \* \*

[358] Q After telling us about the right-to-work law in Alabama and how people could work and you have pointed out here that George Hardeman was dispatched to Pensacola on March 8, 1961, isn't that what the figures say?

A Right.

Q And he told us about that one job he was sent on. You [359] were in the Courtroom when he testified. Do you recall when he testified about that?

A Right.

Q And I notice here that he reported here on April 3, 1961?

A No, sir. Mr. McDonald, you are reading that wrong.

Q What is the date reported?

A He reported back in the office and signed the work list and that was the date to put himself available on the work list.

Q All right. So 4/3/61 you testified he came back and put his name on the work list?

A Right.

Q I noticed he was never dispatched again?

A He never kept himself available when that thirty

days run out. He had seven days variation between the period he was to report back. He had seven days before that period or seven days after it.

Q Did you have George Hardeman's address?

A We had the address he left in the office.

Q Did you have his phone number?

A We had a phone number he left on some neighbor of his which is on his record.

[360] Q So, he was available at that address there as far as you knew?

A He did not keep himself available on that work list according to everybody else on his availability card.

Q What do you mean by available?

A It means he was to contact the office as everyone did by punching this card. He was going to keep himself available until we had work where we could call him. If he did not send his card in or bring it in, he would be removed from that work list at the end of that period, seven days beyond the limitation.

Q Isn't it also true that it is a practice in your union that you don't report to go back on the out-of-work list until you have been out on a job and the job is concluded or you are terminated?

A I don't believe I quite understand you on that one, Mr. McDonald.

Q You don't go on the out-of-work list until you are out-of-work, is that right?

A Well, if what you are saying is you don't go on a job and come back the next day and continue to work [361] on that job, no.

Q Right. George Hardeman reported he was out of work and was never sent out again?

A He never came back seeking any work. He never came back.

Q But yet you do admit that he had gone on the out-of-work list on April 3, 1961?

A That records shows that he come back and signed it then.

Q All right, sir. You were in the Courtroom and you heard George Hardeman testify that he went to several



shops and places in the Mobile area that employed boiler-makers and sought employment, didn't you?

A Mr. McDonald, I heard this, but that doesn't make it so, because he said he did.

Q Is it your testimony that Mr. Hardeman was lying?

A I am saying there has been work available in the shops, shipyards and on construction and he did not seek it.

Q As a matter of fact, wasn't it his testimony that he could not get work because of not being a union member?

A I am saying it is false, because he does not have to [362] belong to a union to seek work in these shops?

Q So, it doesn't make any difference in Alabama whether you are a member of a union or not?

A That is correct.

\* \* \*

[368] Q Now, this job that George was sent out on in Cantonement after he was expelled, how long did he stay over there?

A The amount of days—I would have to get the records and see.

Q It was just a few days?

A It wasn't too long.

Q Now, isn't it true that you instructed the foremen and stewards over there to write him off?

A No, sir. That is incorrect.

Q He had to drag up and leave, though, because the conditions got pretty intolerable?

A I don't know about that. He was sent over there to do a job and he didn't do it and got run off for it just like he did on some other jobs.

\* \* \*

[386] Q I mean in 1958, '59 or '60?

A I did not leave the territory.

Q You don't know what the construction was like in the rest of the country?

A We have a way of knowing by calling other business managers.

Q You weren't business manager then?

A But we, as members, know. There are people calling me from all over the United States. In the last three years, I had over a hundred non-union workers. I was taking every man in the country that called me and wanted to go to work in my area. It happened that the other areas had plenty of work, at that time, and nobody hunting work, but the non-union workers, I had over a hundred employed out of my Lodge.

\* \* \*

TESTIMONY OF RICHARD N. KITTRELL,  
WITNESS ON BEHALF OF PLAINTIFF

DIRECT EXAMINATION

\* \* \*

[407] Q The question is, do you know whether or not a man could work in the trade of a boilermaker without a union card?

A In some places, they do, but in some places, they don't, without a referral. Locally, you can work without a boilermaker card.

Q But without a referral from the office?

A Well, I have never seen one go on the job without a referral, work order, but they didn't belong to the union. Union members were starving, I have seen that.

Q Can a man work regularly out of this Lodge without a union card?

A Some do; yes, sir.

MR. McDONALD:

That's all.

CROSS EXAMINATION

BY MR. BRUTKIEWICZ:

Q You said some do work out there without a union card?

A Yes, sir.

Q And you have also seen a lot of union men loaf and watched non-union men go to work?

A Yes. They call them permit men.

\* \* \*

## DISTRICT COURT'S CHARGE TO JURY

[440] . . . Mr. Hardeman, in his complaint, essentially says this, I was wrongfully expelled from the Union and I want damages because of it. I want to be paid, because they wrongfully expelled me and, in short, that [441] is what he says.

The burden of proof is on him to reasonably satisfy you that that is true. If he has done it, he is entitled to a verdict. If he hasn't done it, he isn't entitled to a verdict.

Now, you have to decide the facts. I have to decide the law. This is rather an unusual case to this extent; whether or not he was rightfully or wrongfully discharged or expelled is a pure question of law for me to determine. If I determine that he was wrongfully expelled, then it is up to you Ladies and Gentlemen to determine whether or not he is entitled to anything and, if so, how much. These two volumes here and that is not the one that doesn't have page 4 in it, but these two volumes here contain the entire testimony which was given before the first hearing. That is the three people who were appointed to try this matter for the Union. This is the entire transcript, which was taken by a Reporter just the same as Mr. Howard is taking this case here. I have read that transcript. I have read it in its entirety.

[442] The notice which was sent to Mr. Hardeman by the President of the Local Union, in effect says, we are going to have a hearing and you are charged with violations of Article 13, Section 1 of the Subordinate Lodge Constitution. Now, that is what they said he was going to be tried under, Article 13, Section 1.

I will paraphrase it, but it says this: "Any member who endeavors to create dissension among the members; or who works against the interests and harmony of the International Brotherhood or of any district or subordinate lodge; who advocates or encourages a division of the funds, or the dissolution of any district or subordinate lodge, or the separation of any district or subordinate

lodge from the International Brotherhood; who supports or becomes a member of any dual or subversive organization which shall be hostile to the International Brotherhood or to any of its subordinate lodges, or which is antagonistic to the principles and purposes of the International Brotherhood, shall upon conviction thereof be punished by expulsion from the International [443] Brotherhood."

As I have said, I have read the entire transcript and I have read nothing which would support a finding of guilty under that particular section.

Now, he was also notified that he was accused of violating Section 1 of Article 12 of the Subordinate Lodge By-Laws. Article 12 of Section 1 says, "It shall be a violation of these by-laws for any member through the use of force or violence or the threat of the use of force or violence to restrain, coerce or intimidate, or attempt to restrain, coerce or intimidate any official of this International Brotherhood or Subordinate Lodge to prevent or attempt to prevent him from properly discharging the duties of his office."

Now, those were the two charges that Mr. Hardeman was advised that he would be tried on. There is no evidence in this transcript which would justify him being convicted or found guilty in Section 1 of Article 13 of the Subordinate Lodge Constitution. All that is in this transcript is about the fight. That is the whole thing that is in that transcript.

Now, there may be, and I am not ruling on it one way [444] or the other, but I will say this that there is evidence in here which might support a finding of guilty under Section 1 of Article 12 of the Subordinate Lodge By-Laws, but the trial body said we find him guilty and we recommend that he be expelled. They didn't say we find him guilty under either one section or the other. They said they found him guilty. Inasmuch as there is nothing here which would support a conviction under this section, then I think the verdict cannot stand and his being convicted, the penalty for which was expelling him, and I think, inasmuch as there is no evidence which would support a

finding of guilty under this, that the finding of the board was erroneous and cannot stand in that respect.

Now, that is all they charged him with were those two sections and there is nothing in this record that would justify a finding of guilty under those sections. All of it is about the fight.

I am telling you, as a matter of law, that under the proof, the finding which resulted in his being expelled, cannot legally stand and therefore he was wrongfully expelled.

[445] Now, what you Ladies and Gentlemen have to decide is this; was he thereby damaged, and, if so, how much. If his wrongful expulsion damaged him, he is entitled to damages. You have first got to decide, did this wrongful expulsion damage him? If it did, then you have to go further and say, how much did it damage him? If his wrongful expulsion didn't damage him, then he is not entitled to anything.

Well, you would consider this, if you thought it damaged him, if it damaged him, he would be entitled to what is known as compensatory damages. That means in such an amount as would reasonably compensate him for being wrongfully expelled. If it caused him to lose valuable rights, what are they worth? If it caused him to lose wages, how much did it cause him to lose? If it caused him to lose wages in the past, then how much was it? Is it going to cause him to lose wages in the future, and, if so, how much?

Now, you have to use your common sense in deciding these questions, but if the wrongful expulsion caused him loss, how much was it? You would [446] have to decide it and it would be an amount which would reasonably compensate him for being wrongfully expelled.

• • •

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

PLAINTIFF'S EXHIBIT NO. 1

(Admitted in Evidence January 16, 1969)

[1]

MR. HERMAN H. WISE,  
Registration No. 861,842

*Plaintiff,*

vs.

MR. GEORGE W. HARDEMAN,  
Registration No. 1,259,097

MR. KERMIT R. BULLOCK,  
Registration No. 1,205,022 and

MR. E. T. BRASWELL,  
Registration No. 70,569

*Defendants.*

VIOLATION OF ARTICLE 13, SECTION 1,  
SUBORDINATE LODGE BY-LAWS,

and

VIOLATION OF ARTICLE 12, SECTION 1,  
SUBORDINATE LODGE BY-LAWS.

TRANSCRIPT OF HEARING HELD AT THE  
BOILERMAKERS' UNION HALL AT 750 CONTI  
STREET, MOBILE, ALABAMA, ON NOVEMBER  
12, 1960, BEGINNING AT APPROXIMATELY  
10:00 A.M. AND ENDING APPROXIMATELY  
7:15 P.M.

APPEARANCES :

TRIAL COMMITTEE: Mr. Frank N. Goodman, Chairman  
Registration No. 1,380,214

Mr. Perry Davenport  
Registration No. 1,345,825

Mr. James F. Fowler  
Registration No. 992,184

INTERNATIONAL REPRESENTATIVE: Mr. Charles E. Goodlin

COUNSEL FOR DEFENDANTS HARDEMAN AND BRASWELL: Mr.  
Robert Dobson

WITNESS FOR PLAINTIFF: Mr. W. C. Bell

WITNESSES FOR DEFENDANTS: Mr. Rufus Raines; Mr. Alvin  
Curtis Lane; Mr. Edward E. McRee; Mr. A. W. George.

WILMA A. BELL  
311 Gaines Avenue  
Mobile, Alabama

[2] MR. GOODMAN: Gentlemen, I declare this hearing duly opened. Gentlemen, this committee has stated its position previously as to its desire that each one receive a fair hearing in this matter. Brother Hardeman, you are charged with violation of Article 13, Section 1, Subordinate Lodge Constitution, and Article 12, Section 1, Subordinate Lodge By-Laws. Brother Davenport, would you read Article 13, Section 1 of the Subordinate Lodge Constitution?

MR. DAVENPORT: On page 93 of our Constitution, Section 1: "Section 1. Any member who endeavors to create dissension among the members; or who works against the interest and harmony of the International Brotherhood or of any District or Subordinate Lodge; who advocates or encourages a division of the funds, or the dissolution of any District or Subordinate Lodge, or the separation of any District or Subordinate Lodge from the International Brotherhood; who supports or becomes a member of any dual or subversive organization which shall be hostile to the International Brotherhood or to any

of its Subordinate Lodges, or which is antagonistic to the principles and purposes of the International Brotherhood, shall upon conviction thereof be punished by expulsion from the International Brotherhood." Concluding Section 1.

MR. GOODMAN: Brother Fowler, will you read Article 12, Section 1 of the Subordinate By-Laws?

MR. FOWLER: "It shall be a violation of these By-Laws for any member through the use of force or violence or the threat of the use of force or violence to restrain, coerce or intimidate, or attempt to restrain, coerce or intimidate any official of this International Brotherhood or Subordinate Lodge to prevent or [3] attempt to prevent him from properly discharging the duties of his office." This is the end of Section 1.

MR. GOODMAN: Brother Hardeman, will you step forward? You have heard the charges read against you. How do you plead?

MR. HARDEMAN: Not guilty.

MR. GOODMAN: Brother Hardeman, do you have someone representing you as counsel?

MR. HARDEMAN: Mr. Robert Dobson.

MR. GOODMAN: Would you prefer that he make the statement?

MR. HARDEMAN: Yes.

. . .

[26] MR. GOODMAN: Brother Wise, will you come forward and read your charges?

#### TESTIMONY OF MR. HERMAN H. WISE

MR. WISE: My name is Herman H. Wise, registration number 861842. These charges as addressed to our president of Subordinate Lodge No. 112, Mr. Arl W. George. Subject: Charge and violation of Article 13, Section 1, Subordinate Lodge Constitution and Article 12, Section 1, Subordinate Lodge By-Laws, by George W. Hardeman,



Registration No. 1259097 and Kermit R. Bullock, Registration 1205022 and E. T. Braswell, Registration No. 70569. Dear Sir and Brother: Please accept this letter as a formal statement of [27] charges of violations of the above articles and sections of the Subordinate Lodge Constitution and Subordinate Lodge By-Laws, by George W. Hardeman, registration no. 1259097; Kermit R. Bullock, registration no. 1205022 and E. T. Braswell, 70569. Such violations occurred at the union's office at 750 Conti Street at approximately 10:10 A.M., on October 5, 1960, when I walked out of my office into the waiting room with W. C. Bell. At that time Mr. Hardeman raised up out of his chair and handed me a telegram and asked me to explain it. While I was reading the telegram, Hardeman, without warning, started beating me about the face and head, causing severe injury. W. C. Bell attempted to get Hardeman to stop beating me by grabbing his shoulders and asking him to stop. I did not return any of Hardeman's blows. E. T. Braswell, who is a member of this brotherhood, but not of lodge 112, then threatened Bell if he didn't quit attempting to stop the beating. In addition, Kermit R. Bullock rushed in from the front porch of the office and added his . . . Braswell said: "Bell, you keep your hands off of George or I will knock your block off." Hardeman continued to beat me about the face and head until he was exhausted. I then went back to the office 'phone and called the police. When they arrived, I went out to talk to them and then Hardeman and Bullock had left. The police officers asked me what had happened, and when I started to tell them, E. T. Braswell struck me in the face, breaking my nose, at which time the two police officers subdued him. In addition to the above violation, Kermit Bullock threatened me with assault on my health and my life, on June 22, 1960 at approximately 2:30 P.M. at the [28] job of Brock and Blevins at Scott Paper Company, Mobile, Alabama. This threat was made in the presence of Charles Trepnagier, then the international trustee of the lodge and Harold Foster, the director for Brock and Blevins on that job. Fraternally yours, Herman H. Wise. I would like to call a witness to the stand, Mr. W. C. Bell, at this time.

. . .

[29] MR. WISE: Mr. Bell, do you recall the morning of October 5 of 1960, as being in this building at approximately 10:10?

MR. BELL: I do.

MR. WISE: Do you recall me walking out of my office at approximately 10:10 on October 5, 1960?

MR. BELL: I do.

MR. WISE: Who was in the waiting room or lobby of our hall as I walked out of the office, to your best recollection?

MR. BELL: George Hardeman and Mr. Braswell.

MR. WISE: Were there anyone else in that room present other than yourself, myself, Mr. Hardeman and Mr. Braswell?

MR. BELL: Not at that time.

MR. WISE: For the record, will you tell just what happened when I walked out of my office into the lobby as I was on my way to work?

MR. BELL: As we walked out and as I approached the door, George handed you a telegram and as you attempted to read the telegram George began to hit you about the face, and I caught hold of George and tried to stop him and Mr. Braswell caught hold of me by my arm and asked me not to interfere and I stepped back.

MR. WISE: Did I strike Mr. Hardeman at any of this time?

MR. BELL: You did not.

[30] MR. WISE: Did I attempt to strike Mr. Hardeman?

MR. BELL: You did not.

MR. WISE: Did anybody else come into the room while this was taking place?

MR. BELL: Yes.

MR. WISE: Did anyone enter the door and say anything to you?

MR. BELL: Yes . . . (the witness pointed to Mr. Bullock)

MR. WISE: Mr. Bullock? He did come into the room?

MR. BELL: Yes.

MR. WISE: When he did come into the room, did you hear him say anything?

MR. BELL: I heard it, but I didn't quite understand it at that time. Mr. Bullock did say to me later as I went out the door, "I'll see you later." But he said something at that time but I didn't catch just what he said.

\* \* \*

[31] MR. WISE: And you have the opinion that the reason you did not stop the fight that you was hindered from stopping the fight because somebody had walked up and interfered to keep you from stopping the fight?

MR. BELL: Yes.

MR. GOODMAN: Is that your statement, Brother Bell? Is that the reason you did not interfere?

MR. BELL: Yes.

MR. WISE: The reason you did not stop the fight was because you [32] was hindered from stopping the fight?

MR. BELL: Yes, I was hindered from stopping the fight.

MR. WISE: And you was hindered from stopping the fight by Mr. Braswell and then later by Mr. Bullock coming in?

MR. BELL: Yes.

MR. BULLOCK: Did I put my hands on you, Bell?

MR. BELL: No.

MR. GOODMAN: Brother Bullock, you are going to have a chance to cross-examine the witness.

MR. WISE: After that time, I come back into the office and called the police and when the police arrived, were you in the hall when the police arrived?

MR. BELL: I was.

MR. WISE: Did the policemen ask me what had happened?

MR. BELL: The police asked you what had happened and you told them about George jumping on you and me attempting to stop George from jumping on you and about Mr. Braswell interfering. When you said Mr. Braswell interfered, Mr. Braswell jumped on you then.

MR. WISE: How many times did Mr. Braswell hit me?

MR. BELL: Twice as I saw. Once on one side of the nose and once on the other.

MR. WISE: I have a statement from Patrolman Pounder, the arresting officer. "I, T. F. Pounder, patrolman, received a call to 750 Conti Street on October 5, 1960, and on arrival was told by Mr. Herman H. Wise that there had been a disturbance. He pointed out to me that one of the men involved as Mr. Braswell. He then stated that a Mr. George Hardeman had already left. While he was [33] telling me and Officer Sam Martin of the disturbance Mr. Braswell came over and hit Mr. Wise in the nose. Officer Martin and I proceeded to stop Mr. Braswell, put him under arrest and booked him for disorderly conduct, Mr. Wise was the complaint. Signed by T. F. Pounder and witnessed by Raymond G. Dominey, P. O. Box 1397, Mobile, Alabama, and Marilyn Schwartz, 53 No. Georgia Avenue, Mobile, Alabama." I would like to enter this into the record as Exhibit A. I would like for everybody to look at this. (The reporter marked the statement as Exhibit A.)

• • •

[34] MR. DOBSON: I am asking you, Brother Wise, where were you at when these people witnessed this?

MR. WISE: Officer Pounder come to my office and made this statement and his signature was witnessed by the undersigned.

MR. DOBSON: Here in the office?

MR. WISE: Here in the office.

\* \* \*

MR. WISE: Mr. Bell, as a result of this disturbance, you did accompany me to the hospital where I received treatment for my injuries that I had received from this?

MR. BELL: Yes.

MR. WISE: You did accompany me to the court the next morning, the police court?

MR. BELL: Yes.

MR. WISE: And as for the record, I would like to state that in the police court Mr. Braswell was acquitted apparently, I don't [35] know, but apparently from his age. Mr. Hardeman had received a fine of \$25.00 and costs of court. Brother Bell, will you verify that?

MR. BELL: I will verify that.

MR. WISE: Mr. Bell, did you see Mr. Hardeman when he left the building after this had occurred that morning?

MR. BELL: I did.

MR. WISE: Did anybody leave the building with him?

MR. BELL: I didn't see anybody leave the building with him.

MR. WISE: Did you see Mr. Bullock when he left the building?

MR. BELL: Yes, immediately after George left.

MR. WISE: Immediately after George left. Did Mr. Bullock say anything to anybody or to you or anything

else after he got outside of the building pertaining to the fight?

MR. BELL: Only that he would see me later.

\* \* \*

[37] MR. GOODMAN: Brother Bell, Brother Davenport wishes me to address a question to you. Brother Bullock made the statement that "I'll see you later." Did he say that in a threatening manner or anything?

MR. BELL: Well, the tone of voice that he was using was a threat.

\* \* \*

MR. WISE: Mr. Bell, then the words he spoke to you was in the tone of a threat other than a friendly tone?

MR. BELL: It was. It was in the tone of a threat. I wouldn't have spoke to my brother in the tone that he spoke to me as friendly.

MR. WISE: I have no further questions.

MR. GOODMAN: Do you have any further witnesses?

MR. WISE: That is all the witnesses I have.

\* \* \*

[50] MR. DOBSON: Brother Wise, is it your duty around here to keep law and order in this place?

MR. WISE: I have the authority to try to keep order as much as I can.

[51] MR. DOBSON: That was on Monday before the fight, wasn't it, George?

MR. WISE: What day of the month was that?

MR. DOBSON: That would be Monday, whatever day it was.

MR. HARDEMAN: The 3rd.

MR. DOBSON: The 3rd of the month you sent this man to jail, didn't you? You didn't go down and put any charges against him, did you?

MR. WISE: No, I didn't go down and put any charges against him.

MR. DOBSON: What were you doing, just harassing him? Just trying to keep him waiting here or what?

MR. WISE: No, I will get to that later.

MR. DOBSON: Why don't you get to it when I ask the question? I am cross-examining you. That was the reason for sending the man to jail?

MR. WISE: I didn't send him to jail. I called the policeman because he had come to the door and told me that he wanted a referral. I said: "Well, George, I will have to wait and see. I don't know where you are on the list. I will have to wait and see." He said: "Well, I am going to get a referral today or tomorrow or you and I are going around and around right here, out yonder or wherever it might be." I started to close the door and he tried to pull the door on me so I just come back and called the police and told them he was trying to cause some disturbance and I would like for him to be carried out. I didn't prefer charges or didn't sign a complaint because I thought George was probably mad or something.

. . .

[80] MR. DOBSON: Brother Wise, when the police came back around here, up until that time Brother Braswell hadn't done anything, had he? In other words, all of his troubles started after they were here. Is that right?

MR. WISE: Well, all that Brother Braswell did before the police come was to interfere with Mr. Bell trying to stop the fight.

MR. DOBSON: He interfered with trying to stop the fight?

MR. WISE: Mr. Bell was trying to stop the fight and Mr. Braswell walked up to Mr. Bell and told him to keep his hands off or he would do something.

. . .

[96] MR. DOBSON: This is the statement of George Hardeman. "On Saturday, Oct. 1, 1960, I talked to Leo Bonner and asked him if he had any work in the shop I could do. He said no, but he had a job in the field that he would need a good caulker on. He said the work was real

critical and the job was awful hot, but I had worked for him on jobs like this and he would like to have me and Rabbit Phillips do the chipping and caulking for him on this job. The caulking would be for the purpose of stress relieving, and the customer would watch it close. He said he would write a letter to the Local 112 Business Manager and ask for me and Rabbit on Oct. 3rd. Leo said he thought his contract gave him this privilege to specify men, on special work, if the men were available. I had borrowed a sum of money from Leo to pay my grocery bill and was glad to work for him so I could pay him back. Leo is a member of our Local and has helped a lot of our members. I left home around eleven o'clock Monday morning, Oct. 3rd, and sat in the Hall and didn't say anything to Wise at all. Wise went to dinner and when he came back he went in his office and then came back out and asked me did I want to see him. I said yes and he asked me what about. I told him about talking to Leo and he acted like he didn't know what I was talking about. I told him that I knew he had a telegram asking for me, and I was ready to go to work. Wise said he didn't know if he would send me or not. I tried to show him on the work list where he had sent one man below me on a job and he said he was not going to send me on this job. I told Wise then, "You know I need to work and if you don't give me a referral, me and you are going round [97] and round." He slammed the door, went in and called the police, and when they came he told them I was drunk and had been there raising a disturbance all day. He pointed out Curly Lane on the sidewalk and told the police to take him too. The police talked to Lane on the walk, but did not take him. The police carried me down and one of them asked me what that man had against me by trying to put a drunk charge against me when I wasn't drunk. The police turned me loose. On Tuesday, Oct. 4th, I stayed at the hall all day waiting for a referral, but I didn't get it. I called Leo Bonner that night and asked him if he still wanted me to come to work. He said yes, if I had a referral, but he couldn't put me to work without it. He said he didn't want to have a dispute on his job because his working time was too short. I went to the hall Wednesday, October 5th, and



waited from the time the hall opened until we had the trouble. I tried to make up my mind what to do, whether to sue the Local or Wise or beat hell out of Wise, and then I made up my mind. I had talked to Kermit Bullock and Robert Dobson and they asked me not to have any trouble. I said I had been done dirty enough in this Local and I couldn't take any more mistreatment. I told them about the call for me and that I was going to ask Wise for an explanation and if I didn't get it we were going to have hell. Bullock asked me then not to start any trouble. I went in and sat down and waited for Wise to come out of the office. At the time, Wise had Bell in the office with him, and I believe Bell had offered to give Wise a hand with me if Wise would give him a job. If he hadn't made an agreement with Wise, Bell would not have grabbed [98] me around the waist and held my arms when the fight started. I had asked Wise why he didn't send me on the job, when I knew he had a telegram asking for me. He said, "I don't have to explain to you, that's my business, I just didn't send you." Then the fight started. Bell grabbed me and I hollered, 'Don't hold me and let that man hit me, Bell', but he kept holding me. While Bell was holding me, Wise hit me two or three times in the face, skinning my right cheek, and making a bruised place on my jaw. Wise also hit me three or four times in the chest. Mr. Braswell had asked Bell several times to turn me loose, and not hold me while Wise was hitting me, and Bell finally turned me loose. Wise started hollering, 'Don't hit me no more, I won't skip you no more, I'll give you what's coming to you if you won't hit me no more.' I told Wise, O.K. The fight was over and then we were just arguing and Bullock came in and told me, 'Cut it out George and get out of here.' Bell started toward me again and Bullock told him to stay out of it, that he was not a member of our Local and it didn't concern him. Neither Mr. Braswell or Bullock threatened Bell and they didn't even speak to Wise. Then I asked Bullock to take me home. Wise sent all the men on the job that Leo asked for except me and Grover Ferguson. At least two of the men he sent, and I know it's true, were way below me on the work list, according to the letter which was received

from the International. One man was sent as steward and made foreman after he got on the job. I have only worked eleven days this year, as the records will show. How can any man say I don't have a right to a moral obligation to my family [99] and shouldn't stand up for my legal right to work in order to support them? George Hardeman." Do you want to leave this on the record, George? Do you have a duplicate, George?

MR. HARDEMAN: Yes:

. . .

[101] TESTIMONY OF MR. RUFUS RAINES

. . .

MR. DOBSON: . . . Brother Raines, on the morning this rabble started about ten or eleven o'clock on October 5th, will you just tell the committee there what you actually saw. In other words, in your own words. Don't add anything and don't take anything off—where you was at when it started—where you was at when it ended and everything that took place.

MR. RAINES: On Monday morning now?

MR. DOBSON: I said on October 5th, the date the fight started.

MR. RAINES: Well, I was sitting inside the hall in here in a chair when Brother Hardeman come up and he showed me a telegram.

MR. DOBSON: Just confine it to what actually happened from the fight on—like Brother Wise walking out of the door.

MR. BULLOCK: He ain't heard the charges.

[102] MR. GOODLIN: Let him proceed anyway he wants.

MR. DOBSON: Well, I mean, he could start back two weeks before it happened. I want to make this . . .

MR. GOODLIN: Start the day it happened. He's going along the right track.

MR. RAINES: Well, he just passed a telegram around there and I saw it and read it and said "That's okay." I handed it back to him and you come in and he showed it to you and Brother Bell was sitting there and he showed it to him and said, "See if this won't get my referral, and if it won't, we're going round and round." So, later on Bell come in and stayed back here thirty minutes, I guess, or longer and then I finally walked outside. You and Kermit Bullock walked on off in front of that lady's house and sat down on the curbing. I turned on the porch there and was talking to another, I believe it was Barney Gamble, about some tank jobs and I turned around and looked and there was Brother Hardeman and Brother Bell and Brother Wise standing there and he handed Wise a telegram there and started talking loud and I saw George whenever he popped him. Then Brother Bell ran in there and grabbed him and was holding him there, and I believe, the way it looked to me, Brother Wise was going to stack a whipping on him while Bell held him and I opened the door and come inside . . .

MR. WISE: I object to this statement . . .

MR. DOBSON: Let him make his statement. Let him make his statement and then you can cross-examine him.

MR. RAINES: . . . because I was not going to see one man hold [103] another while the other one whipped him. I won't stand for that. I will even get two dogs off of another. I saw Brother Braswell; he got up and walked around over there and told Brother Bell to turn him loose and he did so and Braswell returned back to his seat there, and Brother Wise and Hardeman scuffled around there a little more and he told Hardeman to "Go on and leave me alone. I won't jump you no more," and then that was all over with. I was there and Robert Dobson, Brother Bullock walked in there and Brother Bullock said, "Come on, George, and get out of here. You have already caused enough trouble."

. . .

[108] MR. WISE: You saw—how many words were

passed before he handed me that telegram? What did he say?

MR. RAINES: Well, now I didn't count the words. It would be impossible. I'm no tape recorder to interpret how many words was said. He was standing there at the door waiting for you to come out to show you the telegram and you come out with Brother Bell and he handed the telegram to you.

MR. WISE: What did he say when he handed it to me?

MR. RAINES: I don't recall just what he did say . . .

MR. WISE: What were some of the words he said?

MR. RAINES: Some of the words he said? I don't know just what he said, but he did say, "If this don't get me a referral, we're going round and round."

MR. WISE: That's what Brother George told me when he handed me the telegram? Thank you. No further questions.

. . .

[112]                      TESTIMONY OF  
MR. GEORGE W. HARDEMAN

MR. DOBSON: Brother Hardeman, tell them what happened on October 3rd, that was on Monday, as to who was here, what words you might have had; just the whole thing in general.

MR. HARDEMAN: Well, I left the house somewhere between eleven and twelve o'clock. Curley Lane had come by the house and drove down with me. We come down together. Also, a boy that don't even belong to the local. He rode down with us. I talked to Leo and Leo told me that if I could come on down and if I could get the referral, I could go to work that evening unloading material, with him, helping him. I asked Brother Wise—I sat [113] in there. Brother Wise went out to dinner and I hadn't even spoke to him. He came back from dinner and walked back here in the office and in just a

few minutes, I don't know who told him that I wanted to see him, because there was twelve or fifteen guys sitting in there. I had walked to the water fountain to get a drink of water. Brother Wise opened the door. He said, "George, do you want to see me?" I said, "Yes." He said, "What do you want to see me about?" I said, "Well, I want to see you about a referral to go to work with Leo," and I tried to explain to him. He told me, he says, "I don't know whether I am going to send you on this job or not." He said, "I haven't made up my mind." He said, "You are too far down the list" or something like that. That is where I referred him to the out of work list. I asked him—I said, "Did you say I'm too far down the list? Why did you send these guys?" I called him out there to show it to him. He wouldn't come and look at the work list. He slammed the door. I sat down in a chair. Two policemen walked in. I spoke to them. I knowed one of them. I spoke to them. I said, "You all hunting the business manager?" I didn't know he had called the law. Before then, I told Brother Wise this: I don't deny it. I said, "Brother Wise, you know that I need to go to work. I've got kids in school. I've only worked eleven days this year." He knowed that I needed to go to work. "Now if you don't send me on this job, me and you is going round and round." He says, "Is that a threat?" I said, "Well, I don't know as I'm threatening you. I'm just telling you that we're going round and round, in that office or that office in there [114] or out in the street, but if I don't make this job, me and you is going round and round." Then, he slammed the door; come in here and called the police. . . .

\* \* \*

[136] (Mr. Bullock continues reading his statement) "On the morning of October 5, 1960, I was mowing the lawn when Brother Thomas Ray Jones stopped by my home and asked me to go to town with him, that he might need my assistance on securing a loan on his home. We stopped by the local at 750 Conti Street, arriving around 9:30 A.M. Sometime later Brother George Hardeman came

up to where Brother Robert Dobson and myself and Brother Barney Gamble, another member of the local union, were sitting in front of the house next door to the hall. Brother Hardeman pulled a telegram out of his pocket and handed it to Brother Dobson and asked him what he thought of it. After he finished reading the telegram, Brother Dobson passed it to me and I read it. While I was reading the telegram, Brother Dobson was making some remarks to Brother Hardeman which went something like this: 'Brother Hardeman, I don't want to see you get in trouble over this and it is my advice to you to forget it and not have any [137] trouble concerning this telegram.' I spoke up and said, 'Yes, George, Dobson is right. There is no need getting in trouble about something like this.' Brother Hardeman told Dobson and myself, 'Well, I'm not going to get in trouble about it, but I am going to ask the business manager to explain to me why he did not send me on this job as requested by this telegram.' Brother Hardeman then went into the hall. Quite awhile later, Brother Dobson and myself were still sitting in front of the house next door to the hall when I noticed some members going up on the porch of the hall in a hurry and then I heard some loud talking coming from the hall. Brother Dobson and I both went in the hall and when I arrived on the scene they had quit fighting but Brother Hardeman was talking to the business manager in a loud tone of voice, saying something to this effect: 'Let this be a lesson to you, Wise, and don't jump me any more on the work list.' I did not see any blows passed and I told Brother Hardeman, 'Cut it out, George, and get out of here.' W. C. Bell made a move as if to interfere and I told him, 'Bell, you don't have any say coming.' Brother Hardeman left the hall at that time and I followed him out. . . .

. . .

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

PLAINTIFF'S EXHIBIT No. 2

(Admitted in Evidence January 16, 1969)

(61) For (36) Against	Parties guilty as charged. (61) Sixty-one to sustain (36) Thirty-six to reject
59 Yes 36 No	Motion by C. M. Morgan and by W. H. Henderson that K. R. Bullock, George W. Hardeman & E. T. Braswell be ex- pelled indefinitely from the organiza- tion.

M. C.

. . .

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

PLAINTIFF'S EXHIBIT No. 5

(Admitted in Evidence January 16, 1969)

AIR MAIL—CERTIFIED

RETURN RECEIPT REQUESTED

L-112-60-14

December 19, 1960

Mr. George W. Hardeman  
610 Ferreil Street  
Crichton Station  
Mobile, Alabama

Dear Sir:

Under date of December 5, 1960, under the provisions of Article XIV, Section 2(f), Subordinate Lodge Constitution, you filed with me an appeal from the unanimous decision of a Trial Committee appointed by the President of Lodge #112 to hold a hearing on charges filed against you by Business Manager H. H. Wise of Lodge #112



and the penalty assessed against you by action of Lodge #112.

Section 2(f), Article XIV, Subordinate Lodge Constitution, of course, provides that such appeals will be filed through the Financial Corresponding Secretary of the Subordinate Lodge; however, your appeal as filed is accepted by the International President for decision.

Charges were filed against you by Business Manager H. H. Wise for violation of Article XIII, Section 1, Subordinate Lodge Constitution, and Article XII, Section 1, Subordinate Lodge By-Laws. The complete file in this case, including the transcript of the trial proceedings, has been referred to me and I have carefully reviewed the entire matter.

The record indicates you were given full opportunity at the hearing to present witnesses and make a full statement as to your position, with the result that the Trial Committee in its report to the Local Lodge unanimously found you "guilty as charged."

The Local Lodge sustained the report of the Trial Committee, and the penalty for the finding of "guilty" of a violation of Article XIII, Section 1, Subordinate Lodge Constitution, is set by the Constitution as expulsion from the International Brotherhood.

From the records furnished to me, the provisions of Article XIV, Subordinate Lodge Constitution, have been followed by the Local Lodge in the receiving of these charges and the conduct of the hearing.

Your stated objections on the basis of your appeal were that "Robert's Rules of Order were not carried out as it takes two-thirds majority of those present to expel any member."

While Article XV, Section 2, International Lodge Constitution, does provide that Robert's Rules of Order shall be the parliamentary law for the International Brotherhood, the procedure on trials, penalties and appeals is fully covered in Article XIV, Subordinate Lodge Constitution, therefore, the provisions of the Subordinate Lodge Constitution prevail and do not require a two-thirds vote.

I find that Local Lodge #112 carried out the provisions



of Article XIV, Subordinate Lodge Constitution, in the conduct of the trial on the charges preferred against you and I find nothing in the transcript nor in your appeal to cause me to reverse the unanimous decision of the Trial Committee of "guilty as charged" nor the action of the Subordinate Lodge in sustaining the report of the Trial Committee.

Your appeal, therefore, is denied and the action of the Local Lodge and your expulsion from membership in the International Brotherhood and Subordinate Lodge #112 is sustained.

Yours truly,

/s/ William A. Calvin  
International President

cc:

H. E. Patton, IST  
C. W. Jones, IVP  
C. E. Goodlin, IR  
Arl W. George, L-112  
H. H. Wise, L-112

oeiu # 320 afl-cio

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

PLAINTIFF'S EXHIBIT NO. 16

(Admitted in Evidence January 16, 1969)

Lafayette Motel  
Long Beach, California

AIR MAIL—CERTIFIED

RETURN RECEIPT REQUESTED

April 19, 1961

Mr. George W. Hardeman  
225 Columbia Avenue  
Mobile, Alabama

Re: Appeal from decision of International President on  
action of Lodge #112 on charges filed by H. H. Wise.

Dear Sir:

On December 30, 1960, you were advised that a panel of the International Executive Council had been designated to hold hearing on your appeal dated December 27, 1960, from the decision rendered by International President William A. Calvin dated December 19, 1960.

President Calvin's decision on December 19, 1960, was the result of an appeal by you to the International President from the action of Lodge #112 on the report of the Trial Committee which conducted a hearing on charges filed against you by Business Manager H. H. Wise of Lodge #112.

Based upon the report of the Trial Committee to the Local Lodge of "guilty as charged," a penalty was assessed by the Local Lodge of expulsion from the International Brotherhood. President Calvin's action was to deny your appeal and to sustain the action of Lodge #112.

At a meeting of the Executive Council held at Long Beach, California on Wednesday, April 19, 1961, the panel of the Executive Council reported to the Council on the investigation conducted at Mobile, Alabama on March 28,

1961. The Executive Council reviewed the entire file and the report of the panel; and you are advised that the Executive Council unanimously adopted the following action.

April 19, 1961

Mr. George W. Hardeman

**ACTION:** That the International Executive Council concur in the report of the panel on the appeal of George W. Hardeman and that the Executive Council deny the appeal and sustain the decision of International President William A. Calvin dated December 19, 1960, upholding the action of the Local Lodge in assessing a penalty of expulsion from membership in the International Brotherhood of George W. Hardeman.

Yours truly,

/s/ HOMER E. PATTON  
International Secretary-Treasurer

cc:

J. A. Grant, IVP  
C. W. Jones, IVP  
J. P. McCollum, IVP  
W. H. Shahane, IVP  
H. H. Wise, L-112

oein #320 afl-cio

### Four Page Booklet

(Admitted in Evidence January 17, 1969)

BOILERMAKERS LOCAL No. 112  
UNEMPLOYED REGISTRATION CARD

INTERNATIONAL BROTHERHOOD OF  
BOILERMAKERS, BLACKSMITHS, IRON  
SHIP BUILDERS, FORGERS AND  
HELPERS

Local No. 112

This card is issued by Boilermakers Union Local 112 to facilitate the recording of unemployed members and applicants who are available for work.

When member or applicant is referred to employment this card must be deposited at Local Union Office, Room 405, 118 N. Royal Street, Mobile, Alabama.

1. Unemployed members and applicants shall register on the out of work list.
2. All unemployed members and applicants shall register each month that they are available for employment or their name shall be removed from out of work list until they report they are again available for employment.
3. All unemployed members and applicants who reside more than forty (40) miles from the City of Mobile, Alabama, may mail their Card in for registration. (Exclude 4 cents for return postage.)
4. Any member or applicant registering employment in the Classification as registered in shall have his name placed at the bottom of the out of work list as provided for in Art. IV, Sec. 2-B of the Joint Referral Committee Rules, Regulations and Standards.
5. No member or applicant shall be registered or referred to employers before 8:30 a.m. or later than 3:00 p.m., except in an emergency.

George Hardeman

Name of Member or Applicant **GA 6-1219**

BOILERMAKERS LOCAL No. 112

Per 403 Miller Bldg.  
11 4. Royal Street Mobile, Alabama  
Helmick 2-6729

Address \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Signature of Officer Reported To \_\_\_\_\_

[illegible]

\* Initial of Officer Reporting

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

DEFENDANT'S EXHIBIT NO. 4  
Local Lodge Bylaws

(Admitted in Evidence January 17, 1969)

• • •

XII. OFFENSES & PENALTIES

In addition to the offenses and penalties set out in the applicable provisions of the International and Subordinate Lodge Constitution, the following offenses and penalties shall be observed in this Subordinate Lodge, and any member who violates same shall, if found guilty after proper hearing as provided herein, be punished as warranted by the offense.

(1) It shall be a violation of these By-Laws for any member through the use of force or violence or the threat of the use of force or violence to restrain, coerce or intimidate, or attempt to restrain, coerce or intimidate any official of this International Brotherhood or Subordinate Lodge to prevent or attempt to prevent him from properly discharging the duties of his office.

• • •

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

DEFENDANT'S EXHIBIT NO. 5

Sub: Lodge Constitution

(Admitted into existence January 17, 1969)

• •

ARTICLE XIII

Offenses and Penalties

1 Section 1. Any member who endeavors  
2 to create dissension among the members; or  
3 who works against the interest and harmony  
4 of the International Brotherhood or of any  
5 District or Subordinate Lodge; who advo-  
6 cates or encourages the division of the funds,  
7 or the dissolution of any District or Subor-  
8 dinate Lodge; or the separation of any Dis-  
9 trict or Subordinate Lodge from the Inter-  
10 national Brotherhood; who supports or  
11 becomes a member of any dual or subversive  
12 organization; who shall be hostile to the  
13 International Brotherhood or to any of its  
14 Subordinate Lodges or to any of its  
15 to the principles which is antagonistic  
16 national Brotherhood purposes of the Inter-  
17 thereof be expelled, shall upon conviction  
18 International Brotherhood by expulsion from the  
brotherhood.

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IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF ALABAMA,  
SOUTHERN DIVISION

GEORGE W. HARDEMAN,

*Plaintiff,*

vs:

THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON  
SHIPBUILDERS, BLACKSMITHS, FORGERS AND  
HELPERS, an unincorporated association.

*Defendant.*

Civil Action No. 4038-66

JUDGMENT, INCLUDING JURY VERDICT

[Filed January 17, 1969]

On this date into open court comes the plaintiff and the defendant by and through their attorneys, and the Petit Jury who were duly empaneled and sworn according to law on the 16th day of January, 1969, and the trial of the case is resumed.

Witnesses are examined and exhibits offered in evidence on behalf of defendant and defendants rests.

Witnesses are examined in re-buttal and exhibits offered on behalf of plaintiff, and all parties rests.

Arguments are heard, the Court charges the Jury, and the Jury retires to consider its verdict.

Now comes the Jury, who having heard the evidence, the arguments and the charge of the Court, upon their oaths do say:

"We, the jury find for the Plaintiff, GEORGE W. HARDEMAN and against the DEFENDANT, THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, an unincorporated association, and assess his damages at \$152,150.

A. GLENN JERNIGAN  
Foreman."

It is therefore ORDERED and ADJUDGED by the Court that a judgment be, and the same hereby is, entered in favor of the plaintiff, GEORGE W. HARDEMAN, and against the defendant, THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP-BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, an unincorporated association, in the sum of ONE HUNDRED FIFTY-TWO THOUSAND, ONE HUNDRED & FIFTY (\$152,150.00) DOLLARS, and the defendant is hereby taxed with costs of court.

DONE at Mobile, Alabama this the 17th day of January, 1969.

DANIEL E. THOMAS  
Chief Judge.



**IN THE**  
**United States Court of Appeals**  
**FOR THE FIFTH CIRCUIT**

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**No. 28012**  
**Summary Calendar**

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**GEORGE W. HARDEMAN, *Plaintiff-Appellee***

**v**

**THE INTERNATIONAL BROTHERHOOD OF  
BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS,  
FORGERS AND HELPERS, AFL-CIO, *Defendant-Appellant.***

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**APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT  
OF ALABAMA.**

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**(DECEMBER 22, 1969)**

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**Before THORNBERRY, MORGAN and CARSWELL,  
Circuit Judges.**

**PER CURIAM:** Pursuant to Rule 18 of the Rules of this Court, we have concluded on the merits that this case is of such character as not to justify oral argument and have directed the clerk to place the case on the Summary Calendar and to notify the parties in writing. See *Murphy v.*

*Houma Well Service*, 5 Cir., 1969, 409 F. 2d 804, Part I; and *Huth v. Southern Pacific Company*, 5 Cir., 1969, — F. 2d —, Part I [No. 27439, Oct. 7, 1969].

Appellee Hardeman brought this action against the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, seeking damages under the Labor-Management Reporting and Disclosure Act of 1959, 29 U. S. C. § 401, et. seq., for unlawful expulsion from the Union. The jury returned a verdict in favor of appellee in the amount of \$152,150.00 and the District Court entered a judgment in that amount.

The Union appeals, raising many of the same issues decided against it in *International Bro. of Boilermakers, Etc. v. Braswell*, 388 F. 2d 193 (5th Cir., 1968), a case arising out of the exact factual situation as that involved in the present case. The Braswell case is dispositive of those issues. We have carefully considered appellant's other specifications of error and find them to be without merit.

The judgment of the District Court is

**AFFIRMED.**

IN THE  
**United States Court of Appeals**  
FOR THE FIFTH CIRCUIT

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**No. 23776**

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INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,  
IRON SHIPBUILDERS, BLACKSMITHS, FORGERS  
AND HELPERS, *Appellant*,

v.

E. T. BRASWELL, *Appellee*.

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**APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT  
OF ALABAMA.**

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(JANUARY 12, 1968.)

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Before WISDOM and GODBOLD, Circuit Judges, and  
McRAE, District Judge.

WISDOM, Circuit Judge: In this action against the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, AFL-CIO, the plaintiff, E. T. Braswell, alleges that he was wrongfully expelled from the Union. He asserts that this expulsion

was in violation of his rights under the "Bill of Rights of Members of Labor Organizations" of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 401 et seq. He relies particularly on 29 U.S.C. § 411(5):

(5) Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) given a full and fair hearing.

(b) any provision of the constitution and by-laws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

Braswell seeks compensatory and punitive damages only, and not reinstatement. The jury returned a verdict in favor of the plaintiff in the amount of \$12,500, and the Court entered a judgment in that amount. The Union appeals. We affirm.

\* \* \*

Braswell has been a member of the International since 1909, and at the time of his expulsion was a member in good standing of Local 112 in Mobile, Alabama. In the fall of 1960 there was considerable dissension in the Union over the local business manager's allegedly discriminatory assignment of jobs.<sup>1</sup> On October 5, 1960, the business manager, Herman B. Wise, after reading his morning mail, left his office for a local plant where he intended to engage in union business. As he walked out, George Hardeman, one of the members of the Union, met him, handed him a telegram and asked Wise, "Can you ex-

<sup>1</sup> The chronology of events is unclear in the record and in the briefs; the parties are not in agreement as to any of the dates. We have tried to reconstruct the sequence from the testimony offered at the trial, insofar as possible. Any inaccuracies, however, are not relevant to the issues before this Court.

plain this to me". Before Wise could finish reading it, Hardeman struck him in the face. Several other members were "standing around". One clutched at Hardeman, but another threatened to "drop him in his tracks" if he did not release Hardeman. Braswell took no part in the actual fighting but remarked to the man holding Hardeman, "You keep your hands off of him." The police were called. As Wise recounted the incident to a police officer, he pointed to Braswell and said, "And this man was standing here." At this point Braswell struck Wise in the face, breaking his nose.

Wise charged Braswell, Hardeman, and another member with violations of Article 13, Section 1 of the Subordinate Lodge Constitution<sup>2</sup> and Article 12, Section 1 of the Subordinate Lodge Bylaws.<sup>3</sup> A local trial panel

<sup>2</sup> Article XIII, Section 1:

"Any member who endeavors to create dissention among the members; or who works against the interest and harmony of the International Brotherhood or of any District or Subordinate Lodge; who advocates or encourages a division of the funds, or the dissolution of any District or Subordinate Lodge, or the separation of any District or Subordinate Lodge from the International Brotherhood; who supports or becomes a member of any dual or subversive organization which shall be hostile to the International Brotherhood or to any of its Subordinate Lodges, or which is antagonistic to the principles and purposes of the International Brotherhood, shall upon conviction thereof be punished by expulsion from the International Brotherhood."

<sup>3</sup> Article XII, Section 1:

"In addition to the offenses and penalties set out in the applicable provisions of the International and Subordinate Lodge Constitution, the following offenses and penalties shall be observed in this Subordinate Lodge, and any member who violates same shall, if found guilty after proper hearing as provided herein, be punished as warranted by the offense. "(1) It shall be a violation of three By-Laws for any member through the use of force or violence to restrain, coerce or intimidate, or attempt to restrain, coerce or intimidate any official of this International Brotherhood or Subordinate Lodge to prevent or attempt to prevent him from properly discharging the duties of his office.

• • •

conducted a hearing on the charges, found Braswell guilty, and ordered his expulsion. Upon the recommendation of the Union Board the members approved the verdict. He appealed to the Executive Council of the International Union. After another hearing, the Council affirmed the decision of the trial board. Braswell made a final appeal to the President of the International. This appeal was also rejected. He was then formally expelled from the Union. None of these decisions states whether it is based on both or only one of the violations charged. On September 12, 1963, Braswell filed an amended complaint in the district court alleging that the expulsion was wrongful under LMRDA and asking for damages.

## I.

### Jurisdiction

The Union challenges the jurisdiction of the district court over the subject matter on the ground that the National Labor Relations Act, 29 U.S.C. § 151 et seq. preempted the cause of action.

There may be certain ambiguities in LMRDA, but the act does unequivocally state that the rights secured by the bill of rights are to be enforced through private suits and that such suits shall be brought in the district courts.<sup>4</sup> Section 102 of the LMRDA, 29 U.S.C. § 412, provides:

Civil action for infringement of rights; jurisdiction:  
Any person whose rights secured by the provisions of this subchapter have been infringed by any violation

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<sup>4</sup> Earlier versions of the legislation had provided for enforcement of the bill of rights by the Secretary of Labor and for criminal penalties for the unions and union officials who committed such violations of their provisions. In the final version, Congress left enforcement of these rights entirely to private suits. See Rothman, *Legislative History of the "Bill of Rights" for Union Members*, 45 Minn. L.Rev. 199, 216-17 (1960).

of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

At the same time, under Section 103, 29 U.S.C. § 413, union members retain whatever rights and remedies they may have "under any State or Federal law or before any court or other tribunal, or under the Constitution and Bylaws" of their unions.

The Union relies on *San Diego Building Trades Union v. Garmon*, 1959, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775. In *Garmon* the Court held:

"When an activity is *arguably* subject to § 7 and § 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." 359 U.S. at 245. (emphasis added).

The Union suggests that the expulsion of Braswell was "*arguably*" and unfair labor practice under the NLRA, and that exclusive jurisdiction therefore lies with the NLRB. This assertion is erroneous on two counts.

First, the purpose of the *Garmon* rule is to prevent conflicts between federal and state policy. Here, if there is any conflict at all, it is between two federal organs expressing federal policy, and Congress has declared that federal courts, and not the National Labor Relations Board are to have the primary role. "*Garmon* . . . merely rationalizes the problems of coexistence between federal and state regulatory schemes in the field of labor relations. . . . The purpose of Congress is the ultimate touchstone." *Retail Clerks International Association v. Schermerhorn*, 1963, 375 U.S. 96, 103, 94 S.Ct. 219, 11 L.Ed.2d 179.

Second, the cause of action here involved is not arguably subject to the jurisdiction of the Board. When a dispute is solely between the member and his union and does not directly concern rights granted by the NLRA, the preemption doctrine does not come into play. *International Association of Machinists v. Gonzales*, 1958, 356 U.S. 617, 78 S.Ct. 923, 2 L.Ed.2d 1018; *Local 100, United Association of Journeymen and Apprentices v. Borden*, 1963, 373 U.S. 690, 83 S.Ct. 1423, 10 L.Ed.2d 638; *Local 207, International Association of Bridge, Structural and Ornamental Iron Workers Union v. Perko*, 1963, 373 U.S. 701, 83 S.Ct. 1429, 10 L.Ed.2d 646. See also *Vaca v. Sipes*, 1967, 386 U.S. 171, S.Ct. , 17 L.Ed.2d 842.

The question is one of congressional intent—did Congress intend to give the NLRB exclusive primary jurisdiction over the subject matter? In both *Borden* and *Perko* the Court answered “yes”. But neither the preemption doctrine nor the primary jurisdiction doctrine has constitutional bases. A clear indication therefore of congressional intent to confer jurisdiction on the federal district courts to award damages for actions—even if these actions were arguably violations of the NLRA and within the jurisdiction of the NLRB—would control.<sup>5</sup>

The result is in accord with other federal courts which have passed on the question. See *Addison v. Grand Lodge of International Association of Machinists*, 9 Cir. 1962, 300 F.2d 863; *Parks v. International Brotherhood of Electrical Workers*, 4 Cir. 1963, 314 F.2d 886, 922-3, cert. denied, 372 U.S. 976; *Rekant v. Shohtay-Gasos Union Local 446, Amalgamated Meat Cutters and Butcher Workmen*

<sup>5</sup> For many years, before the passage of LMRDA, state courts heard suits by union members against their unions alleging that they had been unfairly disciplined or expelled. See Summers, *The Law of Union Discipline: What the Courts do in Fact*, 70 Yale L.J. 175 (1960). There is nothing here to indicate an unfair labor practice under the NLRA that would bring the Garmon doctrine into play.



of North America, 3 Cir. 1963, 320 F.2d 271, 273-75; *Grand Lodge of International Association of Machinists v. King*, 9 Cir. 1964, 335 F.2d 340, 346-47; cert. denied, 379 U.S. 920; *Burns v. United Brotherhood of Carpenters and Joiners of America, Local 626*, D. Del. 1962, 204 F. Supp. 599, 601-02.<sup>6</sup>

The appellant's attempt to argue that the conduct of which appellee complains constitutes an unfair labor practice (coercion of an employee in the exercise of his rights or of an employer to discriminate) is of no relevance. Even if the conduct is arguably subject to the NLRA (which is doubtful), it is *also* a violation of the LMRDA Act. A clear Congressional directive that federal courts have jurisdiction to entertain suits for damages has precedence over application of the primary jurisdiction rule. We hold that the district court had jurisdiction of this action under Section 412.<sup>7</sup>

## II.

### Jury Trial

In his amended complaint, Braswell demanded a trial by jury. The Union made a timely motion to strike this demand. The district court denied the motion, and the case was heard and decided by a jury. The Union renews here its objection to the jury trial.

<sup>6</sup> In *Barunica v. United Hatters, Cap and Millinery Workers, Local 55*, 8 Cir. 1963, 321 F.2d 764, a complaint alleging that the union had unlawfully failed to refer the plaintiff out on employment was dismissed as not stating a cause of action under LMRDA, the court noting that it was properly an unfair labor practice cognizable before the NLRB. See *Thatcher, Rights of Individual Union Members Under Title I and Section 610 of the Landrum-Griffin Act*, 52 Georgetown L.J. 339, 361-62 (1964).

<sup>7</sup> The very union which is appellant here has defended other suits brought under the jurisdiction of § 412. *Vars v. International Brotherhood of Boilermakers*, D. Conn. 1962, 205 F. Supp. 943 *affirmed*, 2 Cir. 1963, 320 F.2d 576; *International Brotherhood of Boilermakers v. Rafferty*, 9 Cir. 1965, 348 F.2d 307.

The Act itself does not indicate whether a jury trial is to be granted for suits under Section 412. The language of the jurisdictional grant, that "such relief (including injunctions) as may be appropriate" may be afforded indicates that Congress contemplated the entire range of remedies, both legal and equitable. Braswell sought only damages; he did not ask to be reinstated in the Union which had expelled him. In traditional terms, then, his cause of action was purely "legal" in nature.

We find only two federal cases on the question whether a jury trial is required in an action for wrongful expulsion under LMRDA. In *McCraw v. United Ass'n of Journeymen and Apprentices*, 1965, 341 F.2d 705, 709-10, the Sixth Circuit held that a section 412 proceeding was one unknown at common law, and therefore not within the guarantee of the Seventh Amendment. The Court characterized the proceeding as one in equity for reinstatement, with damages merely an incident to relief, and therefore held that a jury trial was not proper. In *Simmons v. Avisco, Local 713, Textile Workers Union of America*, 1965, 365 F.2d 1012, the Fourth Circuit rejected the *McCraw* holding. Judge Sobeloff, for the Court, held that although LMRDA created new rights, and the cause of action was partly equitable, the plaintiff did not lose the right to a jury trial:

The right asserted is indeed one created by statute, but we do not agree that a jury trial is necessarily unavailable because the suit for damages is one to vindicate a statutory right. There is no such cleavage between rights existing under common law and rights established by enacted law, where the relief sought is an award of damages. [citing cases and authorities]

The plaintiff here is suing at both law and in equity. He seeks an injunction to effect his restoration to membership. He also seeks money damages for injury to reputation, and resulting mental anguish—a cause of action of which the developing common law of torts certainly takes cognizance. We see no reason for not

allowing a jury to determine whether the union's wrongful conduct was the proximate cause of the plaintiff's injuries and how much the plaintiff is entitled to recover therefor. . . . Where issues underlying equitable and legal causes of action have been exactly the same, the Supreme Court has been careful to preserve a litigant's right to jury trial on the factual issues, even where a stronger basis was presented for equitable than for legal relief. See *Dairy Queen v. Wood*, 1962, 369 U.S. 469, 473, 82 S.Ct. 894, 8 L.Ed.2d 44; *Thermo-stich, Inc. v. Chemi-Cord Processing Corp.*, 294 F.2d 486, 491 (5th Cir. 1961).

We find Judge Sobeloff's reasoning persuasive. We need not decide, however, whether a plaintiff is always entitled to a jury trial in a section 412 action seeking both legal and equitable relief. Here, where the plaintiff prays for money damages only, the action cannot be characterized as one for reinstatement with money damages as incidental. Here he should be entitled, at his request, to have a jury determine whether the Union's wrongful conduct was the proximate cause of his injuries and the amount of his damages. The district court correctly denied the Union's motion to strike the jury trial demand.

### III.

#### The Expulsion

Braswell does not deny that he struck Wise in the face and broke his nose. The question is whether this act constituted a violation of the Union Constitution and Bylaws that would justify his expulsion.<sup>8</sup> As noted, the Union

<sup>8</sup> Section 101(a)(5) of the LMRDA provides that, except for non-payment of dues, no union member may be "suspended, expelled, or otherwise disciplined" unless he has been "(A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing." Several of the twelve counts in Braswell's amended complaint alleged procedural defects in the manner of selection of the union trial board,

charged Braswell  
out in footnotes  
returned a general

whether Braswell's violations of two provisions, set  
tions. Since the union trial board simply  
Section 1 and of guilty, without specifying  
tion 1 of the byboth or only one of the sec-  
affixed is of no mandatory under Article XIII,  
board's finding is possible under Article XII, Sec-

The district court, by the offense, the penalty  
was no evidence determining the scope of the trial  
Article XIII of

we agree with that as a matter of law that there  
to rule on whether a finding of guilt under  
bylaws, because of the union's constitution. For reasons to be stated,  
the expulsion is not valid. The district court declined  
In view of the fact that the union violated Article XII of the  
to specify by what evidence in the record that  
in his defense, "conviction" under that article.  
invalid. While the first charge and the failure  
violation of the union's constitution, Braswell was prejudiced  
Section 411(5) and the expulsion was therefore  
that, under the union's constitution, specificity might constitute a  
valid under the union's constitution, the same result on the ground  
"[A] union must give due process guaranteed by  
fenses stated the same result on the ground  
courts lack the authority to rule against Braswell's expulsion was not  
thereby rewritten in the charges.  
713, 350 F.2d 1102 (5th Cir. 1965).

This Court recognizes 'implied offenses' and  
in *Allen v. International Union of Marine and Shipbuilding Workers of America*, 393 U.S. 169, 88 S.Ct. 1059, 20 L.Ed.2d 257 (1968).  
constitution." *Simmons v. Local Union No. 100, International Brotherhood of Teamsters*, 436 U.S. 688, 58 S.Ct. 1170, 56 L.Ed.2d 662 (1978).

the notice given to Braswell

hearing was conducted in a very similar question recently  
the complainant's violation of *Theatrical, Stage Em-*  
of these, and the union's constitution, well took no exception  
them here, the union's constitution, the manner in which the

the trial, the manner in which the  
mination of the trial board by Wise,  
it ruled against Braswell on several  
rule either way on others. As Bras-  
rulings below, and does not contest  
it before this court.

*ployees and Moving Picture Operators*, 5 Cir. 1964, 338 F.2d 309. Allen was expelled from his union on a charge that he had violated a provision of the constitution which, by its terms was inapplicable to him. The evidence, however, established that he was guilty of violating another provision of the constitution, but he was not charged under that provision. In affirming the judgment of the district court, finding the expulsion unlawful and awarding reinstatement and damages, we stated:

"It is well established that penal provisions in union constitutions must be strictly construed. In *McCraw v. United Ass'n of Journey [sic] & App. of Plumbing etc., Inc.*, [sic] E.D.Tenn. 1963, 216 F.Supp. 655, 662, a decision under the Landrum-Griffin Act, the Court pointed out: "In determining whether discipline was properly imposed \*\*\* any ambiguity or uncertainty in the constitution must be construed against the union and in favor of the member, in accordance with well established principles of documentary construction.'" 338 F.2d at 316.

Here, as in *Allen*, we also rely on *Vars v. International Brotherhood of Boilermakers*, 2 Cir. 1963, 320 F.2d 576, 578. There the court observed:

"[I]mplicit in the requirement of a full and fair hearing is the requirement that there be some evidence to support the charges made. . . . Thus, although the courts may be without power to review matters of credibility or of strict weight of the evidence, a close reading of the record is justified to insure that the findings are not without any foundation in the evidence."

Applying these principles to the undisputed underlying facts we find that the act charged to Braswell was a blow struck in anger, and nothing more. However reprehensible this act may be, it did not constitute a violation of the provisions in the charges. Article XIII, Section 1 of the constitution on its face is directed as threats to the union as an organization and to the effective carrying out of

the union's aims. Braswell's fist was not such a threat. Article XII, Section 1 of the bylaws proscribes the use of force or violence where the purpose of such force is to prevent an officer of the union "from properly discharging the duties of his office." There is no evidence that Braswell was motivated by this purpose when he struck Wise. Accordingly, we affirm the ruling of the district court that the expulsion was unlawful under Section 411(5).

#### IV.

#### Compensatory Damages

The trial judge charged the jury that if it found that Braswell had suffered any actual damages as a proximate result of his unlawful expulsion, he should be awarded an amount to compensate him for such loss. Compensatory damages are proper relief for an unlawful expulsion under LMRDA. See *Simmons v. Avisco, Local 713, Textile Workers Union*, 4 Cir. 1965, 350 F.2d 1012. As the jury was instructed also on punitive damages, discussed below, and brought in a general verdict, without stating what amounts were allotted to the two types of award, we must assume that some part may have been compensatory. The Union asserts that there was insufficient evidence on the record to support an award of compensatory damages. It is true that Braswell's claim that he lost union insurance and welfare rights was sufficiently countered by testimony and documents showing that he was not eligible, even had he remained a member, but there was testimony regarding the average earnings of a boilermaker, that non-union members would find difficulty in securing work, and regarding Braswell's earnings before and after his expulsion, from which the jury might have found that he was damaged. We find no fault with the instructions regarding compensatory damages.

## V.

## Punitive Damages.

The trial judge also instructed the jury that if it found that the Union had acted with "actual malice or reckless or wanton indifference to the rights of the plaintiff" it might award punitive damages; that such damages were a punishment to the wrongdoer to be related to the gravity of the wrong; and that such damages were unrelated to the award of compensatory damages. We agree that this was a correct statement of the law of punitive damages and that there was sufficient evidence for the jury to find that the Union had acted with malice or wanton indifference. The Union contends, however, that LMRDA does not permit the award of punitive damages under any circumstances. As the jury brought a general verdict, and as the evidence regarding actual damages was slight, we cannot assume that no punitive damages were awarded, and we therefore consider this contention.

We have been able to find nothing in the legislative history of LMRDA which touches directly on this question. Three reported decisions, all in district courts, discuss the point. *Burris v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers*, W.D.N.C. 1963, 224 F. Supp. 277, 280-81 and *Cole v. Hall*, E.D.N.Y. 1964, 35 F.R.D. 4, 8, affirmed on other grounds, 2 Cir. 1965, 339 F.2d 881 held that the Act did not permit punitive damages,<sup>9</sup> *Farowitz v. Associated Musicians of Greater New York, Local 802*, S.D.N.Y. 1965, 241 F. Supp. 895, 909, held that it did.<sup>10</sup>

<sup>9</sup> Cf. *McCraw v. United Ass'n of Journeymen & App. of Plumbing*, etc. 216 F. Supp. 655, 662-63.

<sup>10</sup> Of course, the district court in this case permitted punitive damages, and the district court in *Allen v. International Alliance of Theatrical Stage Employees and Moving Picture Operators*, 5 Cir. 1964, 338 F.2d 309, sitting without a jury awarded punitive damages, see *id.* at 314. The question was not raised on appeal in that case.



The jurisdictional provision, Section 412, permits the granting of "such relief . . . as may be appropriate." We do not agree with the court in *Cole v. Hall* that the use of the word "relief" necessarily rules out punitive damages which are strictly speaking not in the nature of relief. We feel it to be appropriate therefore to look to the purposes of LMRDA, and particularly the "Bill of Rights" section to determine whether the granting of punitive damages would serve to best effectuate those purposes.

In the statutory statement of findings and purposes of LMRDA Congress declares that there are instances of unions' "disregard of the rights of individual employees" and that it "is necessary to eliminate or prevent improper practices on the part of labor organizations . . ." 29 U.S.C. § 401. The awarding of punitive damages in appropriate cases serves as a deterrent to those abuses which Congress sought to prevent.

The state courts, and particularly those of New York have had considerably more experience in curbing abuses in the internal affairs of unions than have had the federal courts in the few years since the passage of LMRDA. It is not inappropriate for the federal courts, in exercising their newly granted jurisdiction to look to this expertise as a guide. "The experience of state courts, both their successes and their failures, can provide helpful guides in devising remedies to make the statutory rights effective." Summers, *The Law of Union Discipline: What the Courts do in Fact*, 70 Yale L. J. 175, 177 (1960). With this in mind, we find persuasive the statement of the New York Supreme Court, Appellate Division, in *Fittipaldi v. Legassie*, 18 A.D. 2d 331, 239 N.Y.S.2d 792, 796:

"Strong reasons of policy promote the use of exemplary damages to deter union officials from conduct designed to suppress the rights of members to a fair and democratic hearing on legitimate disciplinary charges. The very basis for the existence of unionism in our society today is the promise of employment to



those who desire to associate freely in order to obtain it. The right of the working man to the benefits of collective bargaining is too essential and valuable to be hindered, impeded and seriously damaged by irresponsible and dictatorial leaders whose dominance in any given situation does great disservice to the purpose and principles of unionism. When that right of free association is usurped by a concerted, malicious effort to deprive the individual of the safeguards built into the organization, it cannot be condoned . . . Imposition of exemplary damages, when the requisite elements of malice, gross fraud, wanton or wicked conduct, violence or oppression are present, serves to achieve the deterrence they were designed to effect."

We hold that the district court did not err in instructing the jury that it might award punitive damages. As in all remedial legislation, LMRDA should be liberally construed to effectuate its purposes.<sup>11</sup>

For the reasons stated, the judgment of the district court is

**AFFIRMED.**

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<sup>11</sup> Cf. *Simmons v. Avisco*, *supra*, 350 F.2d at 1018, 19, where the court upheld an award of \$15,000 in damages to compensate the plaintiff for injury to reputation and resulting mental anguish caused by his unlawful expulsion from the union.

**United States Court of Appeals**  
**FOR THE FIFTH CIRCUIT**

OCTOBER TERM, 1969

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**No. 28012**  
**Summary Calendar**

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D. C. Docket No. CA 4038-66  
GEORGE W. HARDEMAN, *Plaintiff-Appellee*,

*v.*

THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,  
IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND  
HELPERS, AFL-CIO, *Defendant-Appellant*.

**APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT  
OF ALABAMA.**

Before THORNBERRY, MORGAN and CARSWELL,  
Circuit Judges.

**J U D G M E N T**

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of

the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered that defendant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

December 22, 1969

Issued as Mandate: JAN. 20, 1970

# Supreme Court of the United States

No. 1392, October Term, 1969

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,  
IRON SHIPBUILDERS, BLACKSMITHS, FORGERS  
AND HELPERS, AFL-CIO,

*Petitioner,*

v.

GEORGE W. HARDEMAN

ORDER ALLOWING CERTIORARI. Filed May 25, 1970.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted limited to Questions 1 and 3 presented by the petition which read as follows:

"1. Whether a federal court in a Section 102 proceeding reviewing an expulsion of a member by a union may apply a standard of review whereby the court substitutes its own factual findings and interpretations of the union's constitution and by-laws for those of the union.

"3. Whether the National Labor Relations Act, as amended, preempts an action brought under Section 102 of the Labor-Management Reporting and Disclosure Act wherein a former union member, claiming wrongful expulsion, does not seek restoration of membership rights but claims damages for an alleged loss of employment due to the union's alleged failure to refer him to employers."

The case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.